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1 Q. Okay. And then -- then the last
2 sentence says that CMGT acquired clients such as
3 Howard Hughes Medical Institute, McCord Travel,
4 Atlanta Gas and Light Resources, ZiLOG, and eBay,
5 Inc., through these relationships that it had with
6 the insurance companies. Do you know if that
7 statement is true?

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

9 Q. Do you know whether in August of 2003,
10 CMGT still had any of these companies as clients?

11 A. I -- I don't have the information with
12 me today to answer yes or no.

13 Q. Okay. And do you know -- do you have
14 any idea how much revenue, if any, CMGT obtained
15 from any of these clients?

16 A. I'm sorry. I just don't know.

17 Q. All right. Now, in Paragraph 20, you
18 say that although CMGT had an established business
19 plan, it required approximately 2 million in
20 additional financing to fully explore its
21 potential.

22 What was CMGT going to do with that
23 \$2 million?

24 A. I don't know if I could answer that.

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1 Q. Have you ever known what it was going to
2 do with that money?

3 A. I'd have to look through the documents
4 again to see. I don't want to speculate.

5 Q. Have you ever --

6 A. I -- I could --

7 Q. Have -- do -- do you --

8 A. -- guess, but I don't want to guess.

9 Q. Um-hum. All right. Let's look at the
10 last sentence here. It says, "CMGT conservatively
11 projected that it would achieve a net profit of
12 over 10 million per year within four years of
13 receiving approximately 2 million in financing."

14 A. Um-hum.

15 Q. Who did those projections?

16 A. Well, I didn't.

17 Q. Do you know who did?

18 A. No.

19 Q. Did you ever see them?

20 A. I don't recall.

21 Q. Do you know when -- when the projections
22 were made?

23 A. No.

24 MR. JOYCE: I'm sorry. Read the question

1 back, please.

2 Listen to the question for a minute.

3 (WHEREUPON, the record was read by
4 the reporter.)

5 MR. JOYCE: Oh, I thought he said objections.
6 Projections.

7 THE WITNESS: Projections.

8 MR. JOYCE: Okay. Fine.

9 BY MR. MARINELLO:

10 Q. And your answer was no?

11 MR. JOYCE: His answer was no.

12 BY THE WITNESS:

13 A. Yeah.

14 BY MR. MARINELLO:

15 Q. Okay. And then the last sentence of
16 that paragraph says, "CMGT also projected that it
17 would have 24 million in working capital within
18 four years of receiving additional financing." Do
19 you know who made that projection?

20 A. No.

21 Q. Do you know when it was made?

22 A. No.

23 Q. Do you know what the basis for it was?

24 A. No.

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1 Q. Now, your -- your memo says -- I'm
2 sorry, your complaint says that -- that CMGT
3 retained Spehar Capital to help it obtain financing
4 in June of 2001 and -- and that they entered into a
5 written agreement on October 1st, 2001, right?

6 A. That's what it says.

7 Q. Now, have you reviewed that October 1st,
8 2001 agreement?

9 A. Long time ago.

10 Q. What did it provide?

11 A. In what respect?

12 Q. Well, what was the gist of the
13 agreement?

14 A. CMGT -- Spehar Capital was to help find
15 financing for the money that CMGT needed in order
16 to expand its business operations.

17 Q. Okay. And was -- was -- was Spehar
18 going to be compensated for -- if it did find some
19 financing?

20 A. On a -- yeah, on a percentage of
21 whatever.

22 Q. Whatever came in?

23 A. I -- I believe that's the case.

24 Q. Okay. And then your Paragraph 25 says

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1 that that agreement, the letter agreement dated
2 October 1, 2001, was revised on September 30th,
3 2002, and then it attaches a copy as Exhibit 2,
4 correct?

5 A. That's what the complaint says.

6 Q. Did you review that agreement, the
7 September 30th, 2002 agreement?

8 A. Long time ago.

9 Q. Okay. Now, if you look at the last
10 sentence in Paragraph 26, it says that the
11 agreement provided for a hundred thousand dollar
12 management consultant fee and stock compensation,
13 which was to be awarded upon CMGT's acceptance of a
14 term sheet or other commitment. Do you see that?

15 A. I do.

16 Q. Is that your understanding of the
17 agreement, Paragraph --

18 A. It's been --

19 Q. -- attached as Exhibit 2?

20 A. It's been a while since I've seen it,
21 but I think that that accurately describes that.

22 (WHEREUPON, Mr. Stephen Novack
23 entered the deposition proceedings.)

24

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1 BY MR. MARINELLO:

2 Q. Let's look at Exhibit 2 for a minute.
3 The compensation provisions for this are stated on
4 Page 3. Do you see that?

5 A. It says "Compensation."

6 Q. Yes. Do you see a place where it says
7 that there's going to be a hundred thousand dollar
8 management consultant fee that's going to be
9 awarded upon the acceptance of a term sheet?

10 MR. JOYCE: Which exhibit are you looking at?

11 MR. MARINELLO: Exhibit 2.

12 BY MR. MARINELLO:

13 Q. Look at Page -- let's look at Page 4.
14 That's -- that -- do you see -- do you see No. 2
15 there where it says, "Management Consulting
16 Services"?

17 A. Yeah. Yeah, management consulting,
18 okay, a hundred thousand dollars --

19 MR. JOYCE: 2(a).

20 BY THE WITNESS:

21 A. Yeah, okay. Will pay Spehar a
22 management consulting fee of a hundred thousand
23 dollars.

24

1 BY MR. MARINELLO:

2 Q. And then doesn't it say, "Such fee shall
3 be paid to Spehar as a monthly consulting fee
4 commencing on the first calendar day of the first
5 calendar month immediately following such closing
6 transaction date"?

7 A. That's what it says.

8 Q. So that's after there's a closing,
9 correct?

10 A. I -- I'm only reading the contract that
11 it says.

12 Q. It's not to be awarded to CMG -- upon
13 CMGT's acceptance of a term sheet the way your
14 complaint says?

15 MR. JOYCE: This document's different from the
16 complaint. Is that what you want him to say?

17 MR. MARINELLO: Well, he's attached it as an
18 exhibit to substantiate the allegations.

19 MR. JOYCE: You're asking him to read a
20 document. He's read a document. We've wasted a
21 lot of time today having him read the documents.

22 MR. MARINELLO: Um-hum.

23 MR. JOYCE: Okay. He read it.

24 BY MR. MARINELLO:

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1 Q. Is that what you were referring to when
2 you said in Paragraph 26 that the agreement
3 provided for a hundred thousand management
4 consulting fee which was to be awarded upon CMGT's
5 acceptance of a term sheet?

6 A. I don't know.

7 Q. Okay. The -- does the agreement -- do
8 you understand the agreement to say that a
9 management consulting fee will be payable only
10 after a closing transaction?

11 MR. JOYCE: You mean the document you just
12 pointed him to?

13 MR. MARINELLO: Yes, Exhibit 2, which is the
14 document he defined as the agreement.

15 MR. JOYCE: No, that's not true. He didn't
16 define it as the agreement. You did.

17 BY MR. MARINELLO:

18 Q. Well, let's clarify that.

19 Mr. Grochocinski, please go to
20 Paragraph 25 of your complaint. Doesn't
21 Paragraph 25 of your complaint identify the
22 agreement between CMGT and SC as Exhibit 2?

23 MR. JOYCE: Read the question back, please.

24 (WHEREUPON, the record was read by

1 the reporter.)

2 BY THE WITNESS:

3 A. It says which was to be awarded upon
4 CMG's acceptance of a term sheet.

5 MR. JOYCE: That's not the question he asked
6 you, okay?

7 THE WITNESS: Yeah.

8 BY MR. MARINELLO:

9 Q. Let's take it step by step. Looking at
10 Paragraph 25 --

11 A. Okay.

12 Q. -- have you identified the agreement
13 between CMGT and Spehar Capital as Exhibit 2 to
14 your complaint, yes or no?

15 A. It appears so.

16 Q. Okay. And if we turn to Paragraph -- if
17 we turn to Exhibit 2 of your complaint --

18 A. Um-hum.

19 Q. Doesn't the portion of that agreement
20 that talks about management consulting services
21 provide that they are not payable until there's a
22 closing?

23 MR. JOYCE: Yes, we've read that already.

24 MR. MARINELLO: You're stipulating to that

1 sir?

2 MR. JOYCE: I'm stipulating that's what it
3 says.

4 MR. MARINELLO: Okay.

5 MR. JOYCE: But you're confusing the agreement
6 with a September 30th letter agreement, okay?

7 BY MR. MARINELLO:

8 Q. Well, that's another question I have for
9 you, Mr. Grochocinski.

10 Exhibit 2 appears to be a document that
11 is in kind of a draft form, and it has comments in
12 boxes to the right, correct?

13 A. That's what it appears to be, right.

14 Q. Didn't you -- you couldn't find a
15 formal -- a finalized copy of this agreement when
16 you were looking through the records?

17 A. No, this is the only document that I
18 had, I guess. Whatever I have, I have.

19 Q. Did you ask Mr. Spehar if he had a -- an
20 agreement that didn't have all of these formatting
21 edits all over the place?

22 A. I didn't ask Mr. Spehar anything.

23 Q. Okay. Your counsel has made a
24 distinction between the letter agreement and --

1 strike that.

2 In Paragraph 27 -- now you'll notice
3 that -- that Exhibit 2 has attached to it a list of
4 people, companies, who were approached as a
5 accredited investor/firms or other parties,
6 correct?

7 A. I'm sorry. Where was it? Where were
8 we?

9 Q. Let's go to Exhibit 2.

10 A. Okay.

11 Q. Okay? And at the back of Exhibit 2,
12 there's a list of what -- what's -- what are called
13 accredited investors/firms and other parties. Do
14 you see that?

15 A. (Witness reading document.) Okay.

16 Q. Okay. What do you understand that list
17 of persons to be?

18 A. I don't know.

19 Q. What function does that list of persons
20 perform in the context of this agreement?

21 A. I'm not sure.

22 Q. Okay. If you turn to Paragraph 27 of
23 your complaint --

24 A. Okay.

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1 Q. -- would you read that to yourself.

2 (WHEREUPON, Mr. Stephen Novack left
3 the deposition proceedings.)

4 BY THE WITNESS:

5 A. Okay.

6 BY MR. MARINELLO:

7 Q. Where did that information come from?

8 A. I assume we must have gotten that
9 information either from the documents that we have
10 with -- that were turned over to me, or it's
11 perhaps Mr. Spehar provided that information.

12 Q. Okay. Now, do you understand the chart
13 that's referred to in that paragraph to be the
14 chart that is attached to Exhibit 2?

15 A. Yes.

16 Q. All right. If you look at Paragraph 27,
17 at the very last sentence --

18 A. Um-hum.

19 Q. -- it says, "However, it was Spehar
20 Capital's and CMGT's regular course of dealing to
21 'orally' add third parties to the list without
22 updating Exhibit A in writing." Do you see that?

23 A. I see it.

24 Q. What is your factual basis for making

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1 that statement?

2 A. I assume it was information generated by
3 Mr. Spehar.

4 Q. Do you know for a fact what the basis
5 for that information is, instead of assuming that
6 it came from Mr. Spehar? Did you talk to
7 Mr. Spehar about that?

8 A. No.

9 Q. Do you know that it came from
10 Mr. Spehar?

11 A. No.

12 Q. Okay. You assume it did, though. Okay.
13 What does it mean -- does that clarify
14 for you what the function of Exhibit A was?

15 A. Does it clarify the function of
16 Exhibit A. I -- I -- I'm sorry. I must be missing
17 it. I don't quite understand.

18 You're saying that these people are
19 attached as Exhibit A for people that Spehar could
20 talk to, but that the list itself is not complete
21 according to our complaint and that it could be
22 added or amended orally from time to time. So this
23 is a partial list, apparently.

24 Q. Well, apart from what Mr. Spehar told

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1 you, do you have any evidence --

2 A. I didn't talk to Mr. Spehar.

3 Q. Okay. Strike that.

4 Apart from whatever information you or
5 your counsel received from Mr. Spehar, do you have
6 any other evidence that it was Spehar Capital's and
7 CMGT's regular course of dealing to orally add
8 third parties to Exhibit A?

9 A. I did not talk to anybody about that
10 personally.

11 Q. Okay. Is the answer, then, that you
12 have no information other than the assumption that
13 it came from Spehar?

14 A. Again --

15 MR. JOYCE: He said -- he's answered that
16 about three times.

17 BY THE WITNESS:

18 A. Right.

19 MR. JOYCE: That's his answer.

20 BY MR. MARINELLO:

21 Q. Is that your answer, sir?

22 A. Yes.

23 Q. All right. Paragraph 31, if you would
24 turn to that, says that Mayer Brown was legal

1 counsel for the minority-owned insurance company
2 project, first as counsel for Spehar Capital and
3 Franco, and then as counsel for the partnership,
4 MP.

5 What is your factual basis for saying
6 that Mayer Brown was counsel to SC, Spehar Capital?

7 A. I don't have any independent knowledge
8 of that.

9 Q. Where did that information come from?

10 A. I presume it was from Spehar Capital.

11 Q. Did you ever attempt to verify with
12 Mayer Brown or anyone else whether that statement
13 was true?

14 A. Personally?

15 Q. Yes.

16 A. No.

17 Q. Do you know of anyone else who did try
18 to verify whether that statement was true?

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

20 Q. All right. Paragraph 33 says that, "On
21 or about February 5, 2003, Sealaska signed a letter
22 of intent to purchase a 51 percent interest in CMGT
23 for \$2,000,000." Do you see that?

24 A. I do.

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1 Q. Have you ever seen that letter of
2 intent?

3 A. I don't recall.

4 Q. Are you -- do you know whether that
5 statement is true?

6 A. I presume it to be true. I haven't seen
7 the letter, though, and I don't recall seeing the
8 letter.

9 Q. Do you know what it's based on?

10 A. What's what based on?

11 Q. Well, do you know where that's -- where
12 that -- where did that information come from?

13 A. I don't know.

14 Q. Are you aware of the fact that Sealaska
15 rejected the idea of investing in CMGT?

16 A. Yes.

17 Q. And they rejected it -- what was the
18 figure that they were talk -- when -- when Sealaska
19 rejected it, what was the amount of money that they
20 were talking about?

21 A. I don't recall.

22 Q. It was a lot less than 2 -- \$2 million,
23 wasn't it?

24 A. It might be. I don't know.

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1 Q. So, for all you know, this statement
2 that I just drew your attention to really has no
3 basis in fact?

4 MR. JOYCE: Wrong. He just told you he
5 doesn't know. Now you're asking him to speculate.

6 BY MR. MARINELLO:

7 Q. You're not aware of it having any basis
8 in fact?

9 MR. JOYCE: Again, I object. You're asking
10 him to speculate. He told you he doesn't know the
11 source of the information.

12 MR. MARINELLO: Okay.

13 MR. JOYCE: Then you draw your silly little
14 conclusion.

15 BY MR. MARINELLO:

16 Q. Let's turn to Paragraph 37.

17 THE VIDEOGRAPHER: I need change the tape.

18 MR. MARINELLO: Need to change the tape? All
19 right. Fine. Let's do that.

20 Let's take break while our court --
21 videographer changes the tape.

22 THE VIDEOGRAPHER: Going off the video record
23 at 1:58 p.m.

24 (WHEREUPON, the deposition was

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1 recessed from 1:58 p.m. until
2 2:02 p.m.)

3 THE VIDEOGRAPHER: Going back on the video
4 record at 2:02 p.m., the beginning of Tape No. 4.

5 BY MR. MARINELLO:

6 Q. Okay. If we turn to Paragraph 37 for a
7 minute, please.

8 A. Okay.

9 Q. Okay? Read the last sentence of
10 Paragraph 37.

11 A. "Although CMGT and Sealaska were on the
12 brink of closing a deal, they ultimately were
13 unable to reach mutually agreeable terms."

14 Q. Do you know how close they were to
15 reaching a deal?

16 A. No.

17 Q. Where did this information come from?

18 A. I assume that -- well, I really don't
19 know. I'm not going to make an assumption. I
20 don't know the answer to the question.

21 Q. Okay. If you turn the page, please.

22 A. Um-hum.

23 Q. Paragraph 40 refers to a conversation, a
24 conference call that took place on January 27,

1 2003. Do you see that?

2 A. I see that.

3 Q. Where did the information about that
4 conference call come from?

5 A. Either in the information that was given
6 to me by Mr. Franco or, I would presume, by
7 Mr. Spehar.

8 Q. Do you remember any information that
9 Mr. Franco gave you with respect to that conference
10 call?

11 A. Again, I don't -- I -- I don't.

12 Q. Do you know that he gave you any
13 information about the conference call?

14 A. I don't know.

15 Q. Okay. Paragraph 41 --

16 A. Um-hum.

17 Q. -- states that in May -- "In or around
18 May of 2003, Given and Trautner revived Trautner's
19 Newco deal under the same terms that Franco had
20 rejected in January." Do you see that?

21 A. I do.

22 Q. What -- what's the factual basis for
23 that assertion?

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

1 question.

2 Q. Okay. Do you know whether the certain
3 factual circumstances that CMGT was in had changed
4 from January of 2003 to May, 2003?

5 A. I don't have that information with me
6 now.

7 Q. Well, let me ask you this. Do you know
8 whether CMGT's business took a downturn between
9 January of 2003 and May of 2003?

10 A. I don't know the answer to the question.

11 Q. No idea at all?

12 A. I -- I'm sorry, no, I don't.

13 Q. Okay. Well, the implication of your
14 complaint is that there's something wrong about a
15 situation where a new funding idea is rejected in
16 January, but then suddenly is acceptable in May.

17 Doesn't that depend on whether the
18 circumstances had changed?

19 A. Maybe, maybe not. I don't know the --

20 Q. Maybe not --

21 A. -- answer to that.

22 Q. -- but if the circumstances had changed,
23 that might go a long way to explaining why the
24 financing had become acceptable, correct?

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1 MR. JOYCE: You're asking him to speculate. I
2 object. He doesn't know the answer, so you want
3 him to speculate. It's improper.

4 BY THE WITNESS:

5 A. I don't know the answer to what you're
6 asking me.

7 BY MR. MARINELLO:

8 Q. You have no idea, sir?

9 MR. JOYCE: You asked about three times on
10 that. He said he doesn't know.

11 BY MR. MARINELLO:

12 Q. Now, the -- what's called the Newco
13 letter of intent is attached as Exhibit 3 to your
14 complaint, and your complaint says that the letter
15 of intent provided for Newco either to purchase --
16 to purchase all of CMGT'S assets either by paying
17 half a million dollars in cash or by giving CMGT
18 20 percent of the shares of Newco, correct?

19 A. That's what it says.

20 Q. Okay. Paragraph 42, please. Read the
21 first sentence out loud, please.

22 A. "The Given-drafted letter of intent also
23 stated that Newco would not assume any of CMG's
24 liabilities, other than those associated with

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1 client contracts, but that MBRM's accrued fees
2 would be paid at closing."

3 Q. Do you know whether it's truthful -- a
4 truthful statement that the letter of intent
5 provided that Mayer Brown's accrued fees would be
6 paid at closing?

7 A. What are we referring to? The letter on
8 Paragraph 3 or what?

9 Q. This is your complaint, sir, so I would
10 hope you would have the answer to that question.
11 But --

12 A. What exhibit are you referring to?

13 Q. I'm not referring to any exhibit at this
14 moment.

15 A. Okay.

16 Q. You have stated in Paragraph 42 of your
17 complaint, not mine, that the Given-drafted letter
18 of intent provided that Mayer Brown's accrued fees
19 would be -- would be paid at closing.

20 A. That was my understanding.

21 Q. I'm asking you if that's a truthful
22 statement.

23 A. That's my understanding.

24 Q. Okay. Let's turn to Exhibit 3, okay,

1 which is the letter of intent, and let's turn to
2 Page 2 of that letter of intent. Are you there?

3 A. I am.

4 Q. All right. Let's go to paragraph
5 numbered 4 where it says "Certain Conditions
6 Precedent." Do you see that?

7 A. Um-hum.

8 Q. And you need to answer with a word
9 rather than uh-huh, just for the court reporter.

10 A. Okay.

11 Q. All right. Paragraph (c), do you see
12 that?

13 A. I do.

14 Q. Would you read it?

15 A. It says, "Because of Mayer Brown
16 Rowe & Maw's familiarity with Oldco, Newco required
17 that they document the proposed transaction. Such
18 work will be paid for by Newco on an hourly basis
19 plus an agreement to also reimburse a certain
20 percentage of legal fees that are currently unpaid,
21 all as agreed to between Mayer Brown Rowe Maw and
22 Newco."

23 Q. Okay. Now let me ask you a question.
24 Does that say that all of Mayer Brown's accrued

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1 fees will be paid at closing?

2 MR. JOYCE: Objection. This is absolutely
3 absurd. It says what it says.

4 BY MR. MARINELLO:

5 Q. Is it your understanding, sir, that that
6 document provides that all of Mayer Brown's fees
7 will be paid at closing?

8 A. It was my understanding all of
9 Mayer Brown's fees were going to be paid at
10 closing.

11 Q. And is that based on what this document
12 says, or is that based on something else?

13 A. I don't recall.

14 Q. Well, as you look at these words here
15 and -- and you read the words that say there's
16 going to be a reimbursement of -- and I quote, "a
17 certain percentage of legal fees" --

18 A. Could have been a hundred percent.

19 Q. Could have been.

20 A. Right.

21 Q. Could have been no percent or 1 percent,
22 right?

23 A. Could have been.

24 Q. So how does -- how do you go from that

1 language, which is unclear as to what it means, to
2 stating that Mayer Brown's accrued fees were going
3 to be paid at closing?

4 A. That was my understanding.

5 Q. Okay. And it was based on nothing more
6 than your interpretation of that provision?

7 MR. JOYCE: That's what -- is that --

8 BY THE WITNESS:

9 A. No.

10 MR. JOYCE: -- a question? Is that -- what --
11 what is that?

12 BY THE WITNESS:

13 A. That's not what it said. It said a
14 certain percentage of, and I just finished telling
15 you it could have been a hundred percent. My
16 understanding was they were going to be paid a
17 hundred percent.

18 BY MR. MARINELLO:

19 Q. And what was that understanding based
20 on?

21 A. On my understanding of how that
22 transaction was going to go.

23 Q. And what was that based on?

24 A. I don't know what you --

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1 Q. What was your understanding based on
2 other than the language we just read?

3 A. Well, I probably received information
4 from either Franco and/or Mr. Spehar.

5 Q. Well, you've already told me a number of
6 times, as your counsel has pointed out, that you
7 didn't speak to Mr. Franco, so how --

8 A. That's not --

9 MR. JOYCE: That's not true.

10 BY THE WITNESS:

11 A. -- what I said. I did --

12 MR. JOYCE: Absolutely not true.

13 BY THE WITNESS:

14 A. -- not say that the all.

15 MR. JOYCE: Absolutely not true. He never
16 spoke with Mr. Given.

17 BY MR. MARINELLO:

18 Q. He -- okay. So you --

19 A. I never spoke with Mr. Given.

20 Q. -- think that you spoke to Mr. Franco
21 about --

22 A. I told you --

23 Q. -- about the fees?

24 A. -- that I -- I don't have a present

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1 recollection of dates, times that I spoke to
2 Mr. Franco, that it's conceivable that I spoke to
3 him but that I'm not sure.

4 And as I sit here today, I'm still not
5 sure.

6 Q. So -- so every time --

7 A. So --

8 Q. Every time there's a fact in this
9 complaint, you're going say, well, it's possible
10 that you spoke to Mr. Franco? Is that what you
11 mean? Because you can't remember, so maybe you
12 did? Is that your --

13 A. It's --

14 Q. -- testimony?

15 A. -- possible that I did, and it's
16 possible that I didn't --

17 Q. Okay.

18 A. -- or the information came to me
19 elsewhere.

20 Q. And can you identify where it came from?

21 A. I'm going to explain something. I'm a
22 bankruptcy trustee. I was not there when this
23 transaction occurred.

24 I succeed to the cause of action, as you

1 well know, so I don't have an independent
2 recollection of what occurred and what didn't
3 occur.

4 The best that I can do is get the
5 information that is available to me as bankruptcy
6 trustee, whether it's from Mr. Spehar, documents,
7 or otherwise, and pursue a matter that I think is
8 reasonable, and that's exactly what I'm doing.

9 Q. And do you have any -- any -- do you
10 recognize that you have any responsibility
11 whatsoever to make sure that there's the slightest
12 accuracy to anything you put down on paper?

13 A. Of course. I have counsel that's
14 representing me that's done an investigation and
15 recommended to me to file a -- a cause of action,
16 which I in fact have filed.

17 Q. Okay. Are you relying on your counsel
18 for that then?

19 A. My counsel did an investigation, and I
20 made the final decision to proceed.

21 Q. Right, and let me ask you this: When
22 you decided to put in your complaint that you
23 proceeded with that all of Mayer Brown's accrued
24 fees were going to be paid at the closing, what was

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1 that based on other than possible conversations you
2 cannot recall plus the language of the agreement
3 that you attached as an exhibit to your complaint?

4 A. It's conceivable that we received
5 information from Mr. Spehar.

6 Q. Conceivable?

7 A. It's -- but I don't recall today.

8 Q. Okay. Now, let me ask you another
9 question about that. It says in your complaint
10 that the fees are going to be paid at closing.

11 Does it say anything in your exhibit
12 about when this payment is going to be made?

13 MR. JOYCE: What -- what payment?

14 MR. MARINELLO: The -- the payment to
15 Mayer Brown.

16 BY THE WITNESS:

17 A. I assume at closing.

18 BY MR. MARINELLO:

19 Q. You assume it. Does it say anything in
20 this -- in this document that you attached as the
21 agreement?

22 A. Well, doesn't it say "at closing"?

23 Q. I'm asking you that question, sir.

24 MR. JOYCE: Well, the document speaks for

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1 itself. He's not here to read a document and tell
2 you what it says.

3 BY MR. MARINELLO:

4 Q. Do you see anywhere in the discussion
5 about Mayer Brown getting a certain percentage of
6 its legal fees where it says "and those fees will
7 be paid at closing"?

8 A. I'd have to read the entire document.

9 Q. Take your time.

10 MR. JOYCE: Now, look. If you've got a
11 paragraph to point him to, point him to it.

12 MR. MARINELLO: Well, I do. I've already
13 pointed him. It's Paragraph --

14 BY THE WITNESS:

15 A. But I'm --

16 MR. MARINELLO: -- 4(c).

17 BY THE WITNESS:

18 A. -- not sure whether the rest --

19 BY MR. MARINELLO:

20 Q. Hold on.

21 A. -- of the agreement may --

22 Q. It's Paragraph 4(c). Look at 4(c).

23 Look at Paragraph 4(c). Does it say they're going
24 to be paid at closing?

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1 A. No, it does not.

2 Q. Okay. I -- you know, if you can find it
3 someplace else, then you'll have to chance to
4 rehabilitate your testimony at that time.

5 MR. JOYCE: He doesn't need any
6 rehabilitation. Your testimony -- your answers are
7 so simple to respond to, they've been responded to.

8 MR. MARINELLO: So be it.

9 BY MR. MARINELLO:

10 Q. Do you have any notes from any of your
11 alleged conversations with Mr. Franco?

12 A. I don't think so.

13 Q. Are there any documents that would
14 refresh your recollection about any alleged
15 conversations you had with Mr. Franco?

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

17 Q. Is there anything else that you can
18 think of that might refresh your recollection as to
19 any conversations you allegedly had with
20 Mr. Franco?

21 A. Not that I recall at the time.

22 Q. Okay. Let's look at Paragraph 43. You
23 say that, "On information and belief, Given
24 pressured Franco to agree to the Newco letter of

1 intent."

2 How do you know that Mr. Given pressured
3 Franco to agree to the Newco letter of intent?

4 A. I'm not sure.

5 Q. Is this more information that Mr. Spehar
6 gave you?

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

8 Q. Okay. Your complaint in Paragraph 43
9 also says that Mr. Given did not advise Franco
10 that, if similar terms that were nevertheless more
11 favorable to CMGT were offered to Sealaska or other
12 potential investors, CMGT would likely be able to
13 close a deal that was better than the Newco deal
14 for CMGT.

15 What is the factual basis for that
16 assertion that Mr. Franco -- that Mr. Given did not
17 advise Mr. Franco of that?

18 A. Well, this says "on information and
19 belief," right?

20 Q. Yes.

21 A. Okay.

22 Q. So I'm asking you what's the -- what's
23 the -- what's the factual basis for it.

24 Is it your position that if you make an

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1 allegation on information on belief you can make
2 any --

3 A. No, no, no.

4 Q. -- allegation you want without --

5 A. Of course not.

6 Q. -- any factual basis?

7 A. Of course not.

8 Q. Okay. So then what's the factual basis
9 for that?

10 A. I don't recall right now.

11 Q. Okay. Is there anything that would
12 refresh your recollection?

13 A. I -- I'm sure I must have documentation
14 or information. But I'd --

15 Q. Do you know --

16 A. -- have to go through boxes and boxes of
17 stuff, so I don't really know. I'm not prepared to
18 answer it right now, because I don't have the
19 answer.

20 Q. Can you -- can you identify anyone who
21 is going to testify at trial to that fact, alleged
22 fact?

23 MR. JOYCE: Well, it's -- first of all, that's
24 an inappropriate question for him to be answering

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1 right now. If you want to serve that
2 interrogatory, we'll answer it.

3 BY MR. MARINELLO:

4 Q. If -- are you aware -- okay. Let's go
5 on from there.

6 You go on to say that, "Given failed to
7 give Franco this advice" -- well, strike this.

8 Did -- did Franco ever tell you that
9 Given failed to give him that advice?

10 A. No. I don't believe I had a
11 conversation to that extent.

12 Q. Did -- and -- okay.

13 And then you say, "On information and
14 belief, Given failed to give Franco this advice
15 because the Newco deal ensured that Mayer Brown's
16 accrued fees would be paid." We've already talked
17 about Exhibit 3.

18 A. Yes.

19 Q. And I've already shown you that it -- it
20 does -- it provides a certain percentage may be
21 paid, depending on an agreement that may or may not
22 happen.

23 But is there anything else that you can
24 point to besides that that ensured that

1 Mayer Brown's accrued fees would be -- would be
2 paid?

3 A. Not off the top of my head, no, I don't.

4 Q. Okay.

5 A. Sorry.

6 Q. All right. Paragraph 44, you state in
7 the middle of the paragraph that on August 14,
8 2004 -- I'm sorry, August, 14, 2003, Given and
9 Franco pre-approved a letter of intent with the
10 Washoe, and that you've attached a copy of that
11 letter of intent to Paragraph 4 -- to your
12 complaint as Exhibit 4.

13 Is -- is Exhibit 4 a copy of that
14 document?

15 A. I'll have to take a look and see.

16 I'm not sure. I think --

17 Q. Okay.

18 A. -- so.

19 Q. Where did you get Exhibit 4 from?

20 A. I don't recall.

21 Q. Exhibit 4 in Paragraph 3 -- I'm sorry,
22 in -- in the very first paragraph that's not
23 numbered refers to an investment of \$2½ million in
24 CMGT. Do you see that?

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1 A. I do.

2 Q. Are you aware of any point in time when
3 the Washoe Indian Tribe was willing to invest
4 \$2½ million into CMGT?

5 A. Well, this was obviously not signed,
6 so --

7 Q. I didn't ask you about whether this was
8 signed. What I asked you is, do you have any
9 information to suggest that the Washoe ever
10 intended to invest \$2½ million --

11 A. I did not --

12 Q. -- in the company?

13 A. -- speak to anyone from the Washoe, so I
14 don't have an answer to the question.

15 Q. And, in fact, this letter that you're
16 looking at -- this is dated August 14, 2003. Do
17 you know how many employees CMGT had by that time?

18 A. No.

19 Q. Do you know whether any of the officers
20 of the company had been paid a nickel in salary for
21 the years 2003 or 2002?

22 A. No.

23 Q. So it's very possible that they hadn't
24 been paid in two years?

1 MR. JOYCE: Objection. You're asking him to
2 speculate. He doesn't know.

3 MR. MARINELLO: He had no idea one way or the
4 other?

5 MR. JOYCE: He's answered the question. He
6 doesn't know.

7 BY THE WITNESS:

8 A. Right. I don't know.

9 BY MR. MARINELLO:

10 Q. Okay. Do you know how many clients CMGT
11 had in -- in August of 2003?

12 MR. JOYCE: You asked that about two hours
13 ago.

14 MR. MARINELLO: Well, this is August 14, 2003.

15 MR. JOYCE: You asked that about -- same
16 question about two hours ago. It's amazing you're
17 now going over it again. He didn't know then.
18 He's not going to know now.

19 BY THE WITNESS:

20 A. I don't know the answer.

21 BY MR. MARINELLO:

22 Q. Do you know what its losses were or what
23 its income was or anything else?

24 MR. JOYCE: You asked him that two hours ago.

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1 He didn't know then. He's not going to know now.

2 BY THE WITNESS:

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

4 BY MR. MARINELLO:

5 Q. Can you think of any credible reason why
6 anyone in the world would believe that the Washoe
7 Indian Tribe or any other third party was
8 interested in putting \$2½ million into CMGT on
9 August 14, 2003, given the terrible financial
10 condition that that company was in?

11 MR. JOYCE: I object. He already testified he
12 doesn't know -- he didn't know its financial
13 condition.

14 BY MR. MARINELLO:

15 Q. You didn't know its financial condition,
16 and you never bothered to find out, did you?

17 A. I didn't say that. I said I just didn't
18 know it.

19 Q. And did you ever bother to find out?

20 A. It may be in the documents that were
21 turned over to me.

22 Q. It may; it may not be, correct?

23 A. That's right. It may not be.

24 Q. And -- and if it isn't, it's -- you

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1 never tried to find out?

2 A. No.

3 Q. Okay. Now, your complaint also says
4 that "Franco sent CMGT shareholders a letter
5 soliciting proxies for the Newco deal and stating
6 that there were no other alternatives," and you've
7 attached a copy of Mr. Franco's letter as
8 Exhibit 5.

9 Let's look at Exhibit 5. Is that a true
10 copy of the letter that Mr. Franco, as you
11 understood -- stand it, sent out to all of the
12 investors of CMGT on August 15th?

13 A. I haven't seen this in a long time. I
14 believe it to be.

15 Q. Okay. If you look at the second
16 paragraph of his -- of his letter, he says, "I've
17 attempted to personally discuss the proposed
18 transaction with each of you." Do you see that?

19 A. I see it.

20 Q. Do you know whether he did that or not?

21 A. No.

22 Q. Do you have any reason to believe he
23 didn't?

24 MR. JOYCE: I object. He has -- he doesn't

1 have any knowledge.

2 MR. MARINELLO: Well, he might have knowledge
3 that suggests he didn't speak to everybody.

4 MR. JOYCE: He said he has no knowledge. Then
5 you ask a silly question and ask him to speculate.

6 MR. MARINELLO: I object to your
7 characterization, and I don't want to argue with
8 you, Mr. Joyce.

9 MR. JOYCE: Okay.

10 BY MR. MARINELLO:

11 Q. The next paragraph says that, "The
12 funding process for CMGT has been excruciating for
13 all of us." Do you know what that refers to?

14 A. No.

15 Q. Did you ever try to find out what
16 that -- what Mr. Franco meant by that?

17 A. No.

18 Q. Okay. He says in that same paragraph
19 that, "In addition to devoting over three years of
20 my life to CMGT, I have personally advanced over
21 150,000 of my own money keeping CMGT afloat."

22 Do you have any reason to doubt that
23 that's true?

24 A. No.

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1 Q. Okay. Does that suggest to you that
2 CMGT was in great financial condition as of
3 August 15, 2003?

4 A. People advance money for their own
5 company all the time.

6 Q. That wasn't my --

7 A. So I don't --

8 Q. That wasn't my question.

9 A. I don't find that be to be unusual.

10 Q. I didn't ask you if it was unusual. I
11 asked you if you had any idea as of August 15 --
12 doesn't that fact suggest to you that -- that CMGT
13 was in financial trouble as of August 15th, 2003?

14 A. No.

15 Q. It doesn't, okay.

16 Now, this letter also states that --
17 okay. Let's go -- I'll -- I'll withdraw that
18 question.

19 Let's go to Paragraph 45 of your
20 complaint. You say that, "On or about August 29,
21 2003, the Washoe committed to deliver a signed
22 letter of intent by September 2, 2003, which they
23 did."

24 Have you ever seen a copy of that letter

1 of intent?

2 A. No, I don't recall. What does
3 Paragraph 6 say?

4 Q. Your complaint says that a copy of the
5 Washoe September 2, 2003 letter of intent is
6 attached as Exhibit 6. Let's look at Exhibit 6.

7 A. I see it.

8 Q. Okay. Is that signed?

9 A. No.

10 Q. Have you ever seen a signed copy of that
11 document, signed by the Washoe?

12 A. I don't recall seeing a signed copy.

13 Q. Your -- your complaint says that there's
14 a signed letter of intent from the Washoe Tribe and
15 that a copy is attached as Exhibit 6, and when we
16 look at Exhibit 6, it's not signed. How do you
17 explain that?

18 A. It says, "On or about August 29th, the
19 Washoe committed to deliver a signed letter of
20 intent, which they did." That doesn't necessarily
21 mean that we had it in our possession.

22 Q. Oh, I see.

23 A. They may have delivered --

24 Q. So, in other words -- in other words,

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1 what your -- we should -- we should interpret the
2 first sentence of your complaint to say that the
3 Washoe committed to deliver a signed letter of
4 intent by September 2nd, and then the "which they
5 did" is supposed to me, "Yeah, they really did
6 commit to deliver a signed letter of intent by
7 September 2nd like we just said"?

8 A. I suppose you could interpret it that
9 way.

10 Q. Is that the way you interpret it? It's
11 your complaint. Is that how you interpret it?

12 A. Well, I think you should interpret it
13 any way you like.

14 Q. I'm asking you 'cause it's your
15 complaint.

16 A. All I know is that Paragraph 3 --
17 Paragraph 6 is not signed.

18 Q. You mean Exhibit 6?

19 MR. JOYCE: Exhibit 6.

20 BY THE WITNESS:

21 A. Exhibit 6.

22 BY MR. MARINELLO:

23 Q. And you've never seen a signed letter of
24 intent from the Washoe?

1 A. I did not ask to see one.

2 Q. But you've never seen one?

3 A. Personally, no, I've not seen one.

4 Q. Okay. Your complaint suggests that
5 there is one, but, in fact, you've never seen one?

6 MR. JOYCE: He's said that about three times.

7 BY THE WITNESS:

8 A. I've not personally seen a letter signed
9 by the Washoe.

10 BY MR. MARINELLO:

11 Q. Have you ever asked Mr. Spehar, "Hey,
12 where's the letter of intent that the Washoe
13 supposedly signed, that great deal that made
14 everything that everybody else at CMGT was doing to
15 try and get financing an absolute fraud because
16 they had this great deal from the Washoe?" Did you
17 ever ask him that question?

18 A. No.

19 Q. Did you ever consider whether
20 Mr. Spehar, whom you're now in litigation with, had
21 sold you a bill of goods when he told you the
22 facts -- the alleged facts relating to what
23 Mayer Brown and CMGT and everybody else did?

24 A. Did I ever consider that?

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1 Q. Yes.

2 A. I have to look at facts from all sides,
3 and what I did is hire counsel to help me
4 investigate the underlying facts and make a
5 determination and a recommendation to me whether to
6 proceed and whether sufficient facts --

7 Q. Um-hum.

8 A. -- existed in order to proceed, and
9 that's what I did.

10 Q. What facts, if any --

11 A. So I tried to -- I tried -- just let me
12 finish -- not to speak to Mr. Spehar about these
13 issues, if at all, because he was being represented
14 by counsel.

15 I hesitated to talk to him about such
16 issues without his counsel, and getting additional
17 information from him is sometimes difficult and at
18 the same time not always possible because of the
19 attorney-client relationships that he has with his
20 own attorneys.

21 That's why I hired -- one of the reasons
22 that I hired special counsel to investigate.

23 And I was -- the -- the filing is based
24 on recommendations, and after I looked at the

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1 situation, I proceeded to file.

2 Q. Let me ask you --

3 A. I don't know --

4 Q. -- a question about that.

5 A. -- what else to tell you.

6 Q. Well, let me ask you a question about
7 that. You say the filing was based on
8 recommendations by counsel, right?

9 A. Investigations.

10 Q. Investigations by counsel. Do you
11 believe you filed this complaint in good faith?

12 A. Yes.

13 Q. Based on what?

14 MR. JOYCE: He just told you.

15 MR. MARINELLO: Well, I'm asking him now.

16 MR. JOYCE: You must be hard of hearing.

17 MR. MARINELLO: No, I'm not hard of hearing.

18 MR. JOYCE: Or dumb, one or other.

19 BY THE WITNESS:

20 A. I -- I --

21 MR. MARINELLO: You know, Mr. --

22 MR. JOYCE: Hold on.

23 MR. MARINELLO: You know, Mr. Joyce --

24 MR. JOYCE: Hold on.

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1 MR. MARINELLO: -- that's totally --

2 MR. JOYCE: You've answered this question.

3 MR. MARINELLO: That's totally inappropriate,
4 and, you know --

5 MR. JOYCE: Your questions are obnoxious,
6 repetitive.

7 MR. MARINELLO: My question is --

8 MR. JOYCE: Poorly phrased.

9 MR. MARINELLO: -- very simple. Yes, yes,
10 yes.

11 BY MR. MARINELLO:

12 Q. My question is this: You claim you
13 filed this complaint in good faith.

14 A. I do.

15 Q. Based on what?

16 MR. JOYCE: He told you, investigation of
17 counsel and his own investigation. He said it
18 about ten times. Okay?

19 MR. MARINELLO: Don't answer the question for
20 him, Mr. Joyce.

21 MR. JOYCE: Don't ask the question ten times.

22 BY MR. MARINELLO:

23 Q. What did you base -- what do you base
24 your conclusion on that you filed this case in good

1 faith?

2 A. Because I've done an investigation of my
3 own and a recommendation of counsel who likewise
4 investigated.

5 Q. What investigation did you do of your
6 own other than to look at some documents that
7 Mr. Jud Todhunter and that Mr. Franco gave you and
8 that Mr. Given gave you?

9 A. That's all.

10 Q. That's all, okay. And did any of those
11 documents tell you that the Washoe signed a letter
12 of intent on September 2nd, 2003?

13 A. Did any of those documents tell me?

14 Q. Yeah.

15 A. Those documents don't usually speak to
16 me, but --

17 Q. Well, okay. I'm not trying to be cute
18 with you, Mr. --

19 A. Well, you know what?

20 Q. -- Grochocinski, but if --

21 A. I mean --

22 Q. You want to be cute with me, that's
23 your --

24 A. No.

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1 Q. -- up to you.

2 A. I'm not trying to be cute either.

3 Q. Did you see a document in those files
4 that was --

5 A. I've already --

6 Q. -- signed by the Washoe?

7 A. -- told you I have not seen an executed
8 document --

9 Q. Did you see --

10 A. -- on the Washoe.

11 Q. -- a document in those files that said,
12 "We have an executed document from the Washoe?"

13 A. Not that I recall.

14 Q. Okay. Did you see anything in those
15 files that suggested you saw -- that you had a
16 document signed by the Washoe?

17 A. Not that I recall.

18 Q. Okay. So then your investigation didn't
19 support this allegation one iota, did it?

20 A. I believe it does.

21 Q. You believe it does based on what?

22 A. On the investigation of counsel.

23 Q. Did your counsel report to you that they
24 had seen a document from the Washoe that was

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1 signed?

2 MR. JOYCE: That's attorney-client privilege.

3 I direct you not to answer the question.

4 MR. MARINELLO: That is a factual question,
5 and it is not protected by the attorney-client
6 privilege.

7 MR. JOYCE: Then file your motion.

8 BY MR. MARINELLO:

9 Q. We have filed a document request in this
10 case. You've seen it, haven't you?

11 A. I believe so.

12 Q. You've produced documents, haven't you?

13 A. I have.

14 Q. Have you produced a signed letter of
15 intent from the Washoe?

16 MR. JOYCE: Maybe --

17 BY THE WITNESS:

18 A. I told you.

19 MR. JOYCE: Maybe you can't hear.

20 BY THE WITNESS:

21 A. I told you. I don't --

22 MR. JOYCE: Stop, stop.

23 We're going to leave here in a minute
24 and not come back without a Court Order if you

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1 don't quit acting like you can't hear or can't
2 remember. You're asking the same question --

3 MR. MARINELLO: No.

4 MR. JOYCE: -- again and again.

5 MR. MARINELLO: I -- I -- you know, I disagree
6 with your characterization, but I'm not going to
7 argue with you. I'm just going to move on.

8 MR. JOYCE: Well, I'd like to --

9 MR. MARINELLO: I think the point has --

10 MR. JOYCE: Move on --

11 MR. MARINELLO: -- been made.

12 MR. JOYCE: -- yeah.

13 MR. MARINELLO: Um-hum.

14 BY MR. MARINELLO:

15 Q. Now, your complaint in Paragraph 4 -- 45
16 says that, "Franco verbally agreed to let the
17 Washoe have until October 15 to complete the due
18 diligence."

19 What is your basis for that factual --
20 what's the factual basis for that statement?

21 A. I believe that was information that was
22 provided to me from Mr. Spehar.

23 Q. Anything else?

24 A. Not that I can recall.

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1 Q. Okay. Now, Paragraph 46 says that
2 Given -- Mr. Given on September 3rd, 2003,
3 inexplicably modified the letter of intent to
4 remove one day from the Washoe's due diligence
5 time.

6 What do you mean by "inexplicably"?

7 A. I don't know. Like I suppose you could
8 strike "inexplicably" and just say "Given
9 modified." I don't know.

10 Q. Do you know -- do you have any idea why
11 he modified the letter of intent?

12 A. Well, since I haven't spoken to
13 Mr. Given, I don't know the answer to that.

14 Q. Well, if you reviewed the documents,
15 didn't you notice that the -- that -- that some of
16 the documents that he authored explained why he
17 changed the date to September 29th?

18 A. It's been so long since I've seen the
19 documents, I'm sorry, sir, I -- I don't recall.

20 Q. Okay.

21 A. So if you want to point it out to me,
22 then maybe it would make sense --

23 Q. Well --

24 A. -- to me.

1 Q. -- the question -- the questions
2 really -- sir, this is your complaint, and I just
3 want to know what -- you know, what your basis was
4 for putting these allegations in here, so I'm not
5 going to have time to show you every document in
6 the case.

7 Now, you complain -- I'm sorry. You say
8 that the letter of intent was changed by Given in
9 certain ways that are set out in Paragraph 46.
10 (a) says that "CMG expected to close the New" --
11 "Newco deal by September 30th, 2003."

12 Do you know if that statement was true?
13 Did Newco -- the question, frankly, is this: Did
14 Newco expect to close -- I'm sorry, did CMGT expect
15 to close the Newco deal by September 30th, 2003?

16 A. Based on investigation of counsel, I
17 assume that to be the case.

18 Q. Okay. So -- so that was -- so that
19 change that Mr. Given made was truthful then,
20 correct?

21 A. I'm assuming so.

22 Q. Okay. The next thing in (b), it says,
23 "CMGT would consider any other competing bids until
24 such time as a transaction was consummated." Do

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1 you have any reason to believe that wasn't true?

2 A. No.

3 Q. Okay. The third thing that Given did is
4 he said CMGT did not anticipate closing any other
5 transaction before September 29, 2003.

6 Are you aware of any deals other than
7 the Newco deal and the alleged Washoe transaction
8 that were being considered by CMGT as of the time
9 that Given wrote that letter?

10 A. No, I'm not aware of any.

11 Q. Okay. So that was also a true statement
12 by Mr. Given then, correct, to the best of your
13 knowledge?

14 A. Yes, to the best of my knowledge.

15 Q. All right. And then (d) says that
16 "Franco was the only CMGT employee available to
17 attend to all the various parties conducting due
18 diligence."

19 Are you aware of any other CMG employees
20 who were available to help with the due diligence
21 besides Mr. Franco?

22 A. I'm not aware of any.

23 Q. So that was also a truthful statement by
24 Mr. Given, then, wasn't it?

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1 A. I just said I'm not aware of any. I'm
2 not sure whether it's true or not.

3 Q. But -- but you have no --

4 A. But I'm not aware of any.

5 Q. -- reason to doubt Mr. Given was making
6 a true statement when he said that?

7 A. Again --

8 MR. JOYCE: You're asking him to speculate.

9 BY THE WITNESS:

10 A. Again, I -- I --

11 MR. JOYCE: He doesn't know --

12 BY THE WITNESS:

13 A. I don't --

14 MR. JOYCE: -- he doesn't know.

15 BY THE WITNESS:

16 A. I don't know the answer to the question.
17 I'm only saying that I have no present reason to
18 say yes or no or whatever. It's -- I just don't
19 know.

20 BY MR. MARINELLO:

21 Q. Now, it says next that Given didn't
22 offer any explanation for the modifications he made
23 to the letter of intent.

24 Given didn't offer any explanations to

1 whom?

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

4 Q. Do you know whether Mr. Given in fact
5 offered explanations for -- to Mr. Franco?

6 A. He might have.

7 Q. And he might -- do you know whether
8 he -- Mr. Franco may have even made some of these
9 changes when --

10 A. I -- I --

11 Q. -- he asked Mr. Given to -- to put them
12 into the letter?

13 MR. JOYCE: I object. You're asking him to
14 speculate. He said he doesn't know.

15 BY MR. MARINELLO:

16 Q. Do you know whether Mr. Franco suggested
17 some of these changes?

18 A. No, I don't know the answer to that.

19 Q. Okay. Now, if you look at Paragraph 47,
20 there's a statement that the Trautner/Newco deal
21 was verbally added to Exhibit A of the letter
22 agreement between Spehar Capital and CMGT. Do you
23 see that?

24 A. Yes, I see it.

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1 Q. What is the factual basis for that
2 statement? What do you rely on for that statement?

3 A. Well, the only one that would know
4 anybody -- thing about that would be Mr. Spehar.

5 Q. So that's --

6 A. So I assume --

7 Q. That's from --

8 A. -- that would be --

9 Q. -- Mr. Spehar?

10 A. -- best to -- I assume so, yes.

11 Q. Okay. Did you talk to anybody else
12 about whether that was a true statement?

13 A. Other than investigations with my
14 counsel, no.

15 Q. Um-hum. Did your counsel report any
16 fact to you with respect to whether that
17 Trautner/Newco deal was added to Exhibit A?

18 MR. JOYCE: Objection, attorney-client
19 privilege. I direct you not to answer the
20 question.

21 BY MR. MARINELLO:

22 Q. Are you taking that direction?

23 A. Yes.

24 Q. All right. Let's look at

1 Paragraph 40 -- 49.

2 A. Okay.

3 Q. Do you have any information -- well --
4 well, strike that.

5 What information do you have, if any, to
6 suggest that Mayer Brown was representing Spehar
7 Capital as one of Millennium Partners' four general
8 partners?

9 A. I assume it must come from Mr. Spehar.

10 Q. Do you have any other basis than that?

11 A. No, 'cause I wouldn't have the inside
12 information on that particular document.

13 Q. Did you take what Mr. Spehar told you
14 just hook, line, and sinker and just accept all of
15 it as true?

16 A. Hook, line, and sinker? No, but on the
17 other hand, counsel investigated this situation. I
18 assume that -- that they did whatever they needed
19 to do with respect to this, and -- and if they
20 needed to ask him the question, they asked him the
21 question. If Mr. Spehar provided it to him, that's
22 fine.

23 Q. Did -- did --

24 A. Is that the --

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1 Q. Let me ask you this --

2 A. -- allegation --

3 Q. -- question. Do you know that your
4 counsel did that?

5 A. No, I don't.

6 Q. Did your counsel report any fact to you
7 with respect to whether Mayer Brown represented
8 Spehar Capital as a -- one of the partners --

9 MR. JOYCE: That's attorney-client --

10 BY MR. MARINELLO:

11 Q. -- of MP?

12 MR. JOYCE: -- communication. We're not going
13 to answer. Why -- why do you keep wasting time --

14 MR. MARINELLO: Instruct him --

15 MR. JOYCE: -- with this?

16 MR. MARINELLO: -- not to answer.

17 MR. JOYCE: I have instructed him.

18 MR. MARINELLO: Okay. Then we'll --

19 MR. JOYCE: I'm going to instruct him every
20 single time you ask for attorney-client
21 communications.

22 MR. MARINELLO: Well, I'm going to make a
23 record of it, because I don't think your objection
24 is well taken.

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1 MR. JOYCE: Okay.

2 MR. MARINELLO: Okay? So I'm not arguing with
3 you. I don't want you to argue with me.

4 I'll -- I'll ask the question. You
5 object and instruct him not to answer. I'll ask if
6 he's going to follow that direction, and we'll move
7 on, just like that.

8 MR. JOYCE: That's fine.

9 MR. MARINELLO: Okay.

10 BY MR. MARINELLO:

11 Q. All right. Let's turn the page, please,
12 to Page 14 of your complaint. Paragraph 51 states
13 that "Given made no effort to settle the dispute
14 over the scope of SC's letter agreement." Do you
15 see that?

16 A. I do.

17 Q. What facts do you base that on?

18 A. I believe that Mr. Spehar indicated
19 that -- that there was no agreement or no
20 conversations with -- with CMGT relative to his
21 agreement or alleged breach prior to the
22 litigation.

23 Q. Did you look at the documents that were
24 exchanged between Mr. Given, on the one hand, and

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1 Mr. Spehar on the other that related to

2 Mr. Spehar's claim?

3 A. I -- you know what? It's been so long,
4 I'm probably not even sure if I've seen all of
5 those documents. If you'd like to provide them to
6 me, I'd be happy to take a look at them, but I
7 don't -- I don't -- just don't have a present
8 recollection of those.

9 Q. Um-hum. Do you remember any statements
10 in those documents where Mr. Given specifically
11 referred to the fact that he and Mr. Franco had
12 talked to Mr. Spehar about the -- the --
13 Mr. Spehar's allegations and had not been able to
14 resolve them?

15 MR. JOYCE: Can I have the question read back.

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

18 MR. JOYCE: Thank you.

19 BY THE WITNESS:

20 A. So what's the question now? I don't
21 understand it.

22 BY MR. MARINELLO:

23 Q. Do you remember any statements like that
24 in Mr. Given's e-mail? No?

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1 A. No.

2 Q. Okay. Do you know what assets, if any,
3 CMGT had available at that time to offer to
4 Mr. Spehar prior to the closing of the Trautner
5 transaction?

6 MR. JOYCE: Can I have the question read back.

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

9 MR. JOYCE: Thank you.

10 BY THE WITNESS:

11 A. No.

12 BY MR. MARINELLO:

13 Q. Do you know whether -- do you know what
14 Mr. Spehar's relationship was to Mr. Trautner?

15 A. No, not really.

16 Q. Do you know if they got along?

17 A. I don't know.

18 Q. Do you know if they hated each other?

19 A. I don't know.

20 Q. Do you know if they had had prior
21 disputes?

22 A. I don't know.

23 Q. Do you know if Mr. Trautner wanted
24 anything to do with Mr. Spehar?

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1 A. I don't know.

2 Q. Do you know whether Mr. Spehar insisted
3 as part of any settlement that he had to become
4 part of Newco and had to work with Newco to find
5 financing to be part of its future?

6 A. I don't know.

7 Q. Do you know whether any such proposal
8 like that was acceptable to Mr. Trautner?

9 A. I don't know what was acceptable to
10 Mr. Trautner.

11 Q. Do you know whether any settlement with
12 Mr. Spehar was possible in or around this time
13 frame?

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

15 Q. You -- okay. Now, Paragraph 52 says
16 that, "Spehar Capital was determined to amicably
17 resolve the dispute." What does that mean to you?

18 A. I think that Mr. Spehar likely wanted to
19 get a resolution, but that there was no basis on
20 which to reach a -- an agreement between CMGT and
21 Spehar Capital.

22 Q. Why was there no basis?

23 A. I -- I don't know, because I didn't -- I
24 wasn't there. I'm just -- I'm speculating.

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1 Q. I don't want to be facetious, but did
2 you ever see the movie -- the TV show Friends?

3 A. Sure.

4 Q. You know Phoebe?

5 A. I do.

6 Q. You know when Phoebe said in that one --
7 that one series, "I'd" -- "I'd" -- "I'd really like
8 to help you, but I don't want to"? Do you remember
9 that?

10 A. No, I really don't recall that.

11 Q. Okay. Let me ask you this, okay?

12 Mr. Spehar, you say, and Spehar Capital
13 was determined to amicably resolve this dispute.
14 Did they want to resolve this dispute on anything
15 short of a full adherence to every demand they
16 made?

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

18 Q. Okay. And do you know whether --

19 A. I wish I did.

20 Q. And do you know --

21 A. But I don't know.

22 Q. -- whether -- and do you know whether
23 CMGT even had the possibility of giving Mr. Spehar
24 what he demanded in order to settle the case?

1 A. I don't know.

2 Q. Okay. Now, Paragraph 53 says that
3 Spehar sent Given and Franco a series of e-mails
4 that again tried to resolve a dispute. Have you
5 reviewed those e-mails?

6 A. Not in a very long time.

7 Q. Have you reviewed Mr. Given's responses
8 to Mr. Spehar?

9 A. Same response, not in a very long time.

10 Q. Well, what do you mean when you say that
11 Given's responses were hard-line? What does that
12 mean?

13 A. If you could point out to me what --

14 Q. Yeah, that's in --

15 A. -- you're talking about.

16 Q. -- Paragraph 54.

17 A. I know, but I don't -- I -- I'd have to
18 see what we were talking about in order for me to
19 be able to respond to that. I don't know. I --
20 it --

21 Q. You -- you don't --

22 A. I'm just speculate -- I don't know off
23 the top of my head. I'm sorry.

24 Q. You have no --

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1 A. I just don't know.

2 Q. -- recollection?

3 MR. JOYCE: You said you're on Paragraph 54,
4 you said?

5 MR. MARINELLO: Yes.

6 MR. JOYCE: I don't see "hard-line."

7 MR. MARINELLO: "Given's --"

8 MR. JOYCE: Oh, I see it.

9 MR. MARINELLO: "-- hard-line responses."

10 MR. JOYCE: Got it, yeah.

11 MR. MARINELLO: Um-hum.

12 BY THE WITNESS:

13 A. Did you want me to look at 12 and take a
14 shot at it?

15 MR. JOYCE: Why? If you know, you know. If
16 you don't, you don't.

17 BY THE WITNESS:

18 A. I haven't seen it in a long time.

19 BY MR. MARINELLO:

20 Q. Take a look at Exhibit 12, sure.

21 A. Well, at the bottom, it says, "PS, Ron,
22 in between your many epithets and derogatory
23 comments, you were extremely dismissive today of my
24 efforts to discuss a settlement based on honoring

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1 Spehar's Capital. You encouraged me to 'bring it
2 on' and told me you were 'not afraid' because
3 whatever I do would not affect your deal. In your
4 words, this deal will go forward."

5 Well, I don't know. I mean, sounds
6 hard-line to me, but I -- I don't know.

7 Q. Yeah, well, that's Mr. Spehar, again,
8 characterizing what someone else said, right?

9 A. Well --

10 Q. So you're going to take -- you took --
11 you decided when you drafted this complaint and
12 when you approved it that if Mr. Spehar said it,
13 that was good enough for you, right?

14 A. Well, on the other hand, it would be Ron
15 Given saying, "No, I didn't," right, since he'll
16 be --

17 Q. Not just Ron Given. How about
18 Mr. Franco? Was he on those calls?

19 A. I don't know if he was or he wasn't.

20 Q. You never found out, did you?

21 A. Well, was he?

22 Q. You're the one who had the obligation to
23 investigate --

24 A. I --

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1 Q. -- before you --

2 A. I had --

3 Q. -- filed a complaint, Mr. --

4 A. As far as --

5 Q. -- Mr. --

6 A. As far as I'm concerned --

7 Q. Excuse me. We can't talk over each
8 other. So let me --

9 A. Okay.

10 Q. -- finish my point.

11 A. Sure.

12 Q. You had the obligation to investigate
13 before you filed your complaint, not me.

14 A. As far as I'm --

15 MR. JOYCE: And he told you --

16 BY THE WITNESS:

17 A. -- concerned --

18 MR. JOYCE: -- what he did. He told you he
19 investigated.

20 BY THE WITNESS:

21 A. -- this was a conversation between
22 Mr. Spehar and Ron Given.

23 BY MR. MARINELLO:

24 Q. But you don't know that.

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1 A. There's no indication anywhere in this
2 that says it was between anybody else.

3 Q. Well, I beg --

4 A. So --

5 Q. -- your pardon. Doesn't a copy of this
6 e-mail go to Mr. Lou Franco?

7 A. We're talking about the telephone
8 conversation.

9 Q. Is there anything in here that says
10 it -- he wasn't on the call, Mr. Franco wasn't
11 on --

12 MR. JOYCE: Objection.

13 BY MR. MARINELLO:

14 Q. -- the call?

15 MR. JOYCE: You know, that's ridiculous.

16 BY MR. MARINELLO:

17 Q. Is there anything in here that says
18 Mr. Franco wasn't on the call?

19 A. Doesn't say that he was either.

20 Q. Right, so you just assumed that he
21 wasn't? Okay. All right.

22 Now, let me point out something to you.
23 Paragraph 55, you talk about Mr. Given giving CMGT
24 negligent advice, okay?

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1 And you say that on August 26, for
2 example, Mr. Franco sent a letter to CMGT's
3 shareholders regarding the Newco deal and that the
4 letter says in part -- and then you quote part of
5 the letter.

6 And the letter says -- read that, would
7 you, the first two sentence.

8 MR. JOYCE: What's he reading it for? You're
9 just wasting time. It's right here in the
10 document.

11 BY THE WITNESS:

12 A. "Gerry Spehar/Spehar Capital has claimed
13 that he is entitled to compensation as a result of
14 the Newco transaction under a contract he has with
15 CMGT. Your management and legal counsel strongly
16 agree with the contention."

17 BY MR. MARINELLO:

18 Q. Strongly disagree.

19 MR. JOYCE: Disagree.

20 BY THE WITNESS:

21 A. Disagree, sorry.

22 BY MR. MARINELLO:

23 Q. Stop right there, "strongly disagree
24 with the" -- "this contention."

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1 Do you know whether Mr. Franco and
2 Mr. Given and the other people that were involved
3 in CMGT did disagree with Mr. Spehar?

4 A. I believe they did.

5 Q. Okay. Now let's look at -- at
6 Exhibit 3, which is, as I understand it, your --
7 your best understanding of what the agreement was
8 with -- with -- I'm sorry. It's not Exhibit 3.
9 It's Exhibit 2, the agreement between Spehar
10 Capital and CMGT.

11 MR. JOYCE: That's your characterization of
12 Exhibit 2.

13 BY MR. MARINELLO:

14 Q. Well, let me ask you this. Is Exhibit 2
15 the -- what you understand to be the agreement
16 between -- between CMGT and Spehar Capital?

17 A. I don't know if that's the extent of the
18 agreement at all. Mr. Spehar didn't sign this.
19 Only --

20 Q. Well, I mean --

21 A. -- Mr. Franco did.

22 Q. Your complaint refers to an agreement
23 between Mr. Spehar -- between Spehar Capital and
24 CMGT, and it particularly refers to parties to

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1 Exhibit 2.

2 Now, is there some other agreement that
3 you're referring to?

4 A. I -- I thought that there was more to
5 the agreement. Wasn't there something amended by a
6 letter or something?

7 MR. JOYCE: Right.

8 BY MR. MARINELLO:

9 Q. Look at Paragraph 25 of your complaint
10 on Page 6.

11 A. Didn't we just do this?

12 Q. Well, I -- I mean, but you're
13 questioning it again, so I want to go back and make
14 sure I've got the -- I'm -- I'm reading your --
15 your complaint correctly.

16 A. A copy --

17 Q. Isn't Exhibit 2 the agreement you claim
18 is in effect between CMGT and -- and Spehar
19 Capital?

20 A. But I think the terms were amended
21 again.

22 Q. When do you think they were amended
23 again?

24 A. Revised their October 1st letter on or

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1 about September 30th, 2002.

2 Q. And doesn't it say, "A copy of the
3 September 30th, 2002 letter agreement is attached
4 hereto and incorporated herein by reference as
5 Exhibit 2"?

6 MR. JOYCE: It says that, yes.

7 BY MR. MARINELLO:

8 Q. Does it say that?

9 A. Yes, it does say that.

10 Q. Well, I mean, you're -- let's look at --
11 at Exhibit 2. Isn't that dated September 30, 2002?

12 MR. JOYCE: We've already been through this
13 already, you know.

14 BY THE WITNESS:

15 A. Yes, it does.

16 BY MR. MARINELLO:

17 Q. Is that the agreement or isn't it?

18 A. I don't know.

19 Q. You have no idea?

20 A. I didn't say I had no idea.

21 Q. Well, do you have an --

22 A. Okay.

23 Q. -- idea or not?

24 A. I think that there was more to this

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1 agreement than simply this.

2 Q. Based on what?

3 A. Well, frankly, Spehar didn't sign this
4 agreement.

5 Q. Well, you attached it to your complaint.

6 A. I understand.

7 Q. Have you seen another agreement that
8 Spehar did sign?

9 A. Not that I recall.

10 Q. There's lots of things that aren't
11 signed that are attached to your complaint --

12 A. Okay.

13 Q. -- that are supposed to be the copy.

14 How do you know -- how did you know when
15 you filed this complaint that -- that Exhibit --
16 this belonged as Exhibit 2?

17 MR. JOYCE: He already answered that question
18 before. You are wasting your valuable time.

19 BY MR. MARINELLO:

20 Q. Do you want to answer my question, sir?

21 A. I don't even know what your question is
22 anymore. I've answered it so many times already, I
23 don't remember anymore.

24 Q. Well, I -- here's -- look, here -- let

1 me -- real simple.

2 A. I mean, how many times do I have to --

3 Q. Okay, look. Real --

4 A. -- answer the same question --

5 Q. Real simple.

6 A. -- all over again?

7 Q. Real simple. If you're in my shoes, you
8 want -- and -- and someone is -- is claiming that
9 there's an agreement that governs a transaction and
10 that's the basis of the litigation, you want to
11 know what agreement they're referring to.

12 And I'm asking you, you've attached --

13 A. The paragraph --

14 Q. -- Exhibit 2 --

15 A. -- says what it says.

16 Q. Well, I -- yes, and one can say that
17 about everything, right?

18 A. It says what it says.

19 Q. That's a meaningless statement.

20 My question to you is very simple. Is
21 Exhibit 2 your understanding of the agreement, the
22 written agreement between CMGT and Spehar Capital?

23 MR. JOYCE: He has answered that question
24 about five times.