

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. MARINELLO: I don't think he has, and  
2 he keeps --

3 MR. JOYCE: But -- but --

4 MR. MARINELLO: -- changing --

5 MR. JOYCE: -- you don't --

6 MR. MARINELLO: -- his mind.

7 MR. JOYCE: You don't like his answer. That's  
8 the problem.

9 BY MR. MARINELLO:

10 Q. Well, is it --

11 MR. JOYCE: So --

12 BY MR. MARINELLO:

13 Q. -- or is it -- isn't it?

14 A. To the best of my knowledge, this is --  
15 this formulates part of the agreement between the  
16 two. The rest of them that -- I would have to take  
17 a look at other documents to see.

18 Q. Is there anyplace in Exhibit 2 where it  
19 says that if a letter of intent is approved, Spehar  
20 is entitled to be paid?

21 A. It's a been a long time since I've read  
22 it. I don't know.

23 Q. Well, let me refer you to something,  
24 okay? If you look at the word "Compensation," the

1 heading "Compensation" on Page 3 -- do you see  
2 that, of Exhibit 2? Page 3 of Exhibit 2 has the  
3 word "Compensation" at the top?

4 A. Gotcha.

5 Q. Okay. And it says -- this is the  
6 section of the agreement, isn't it, that defines  
7 and states what Spehar Capital is going to be paid  
8 for compensation, right?

9 A. Yes.

10 Q. Okay. And at the very bottom of  
11 Paragraph 1, doesn't it say, "immediately at the  
12 successful closing of a funding or a transaction as  
13 outlined above, such fees to be determined as  
14 follows"?

15 MR. JOYCE: If it reads -- that's what it  
16 says, yes.

17 BY THE WITNESS:

18 A. That's what it says there.

19 BY MR. MARINELLO:

20 Q. Okay. And don't you understand that to  
21 require that there be a closing of a funding or  
22 other transaction before Mr. Spehar's -- before  
23 Spehar Capital is entitled to be paid?

24 A. Well, there's also a part down here that

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 says "stock compensation," so it appears that  
2 there's additional types of compensation payable in  
3 cash. Then there's a stock compensation, and the  
4 stock compensation, it seems, "At such time as CMGT  
5 receives and accepts a term sheet or other  
6 commitment from an investor for a minimum of  
7 \$1,000,000 accepted capital, CMGT will award Spehar  
8 Capital stock compensation," and the like, so it  
9 looks like --

10 Q. So stop for a second, okay?

11 A. It looks like there's other types of  
12 compensation through here.

13 Q. Let's stop for a second. Let's go to --  
14 isn't Exhibit 4 Mr. Trautner's letter of intent?

15 A. I have no idea. I'd have to --

16 Q. No. It's --

17 A. -- go take a look at it.

18 Q. No, I'm sorry. That's wrong. Let me  
19 give you the right exhibit.

20 MR. MARINELLO: Is it 3?

21 BY MR. MARINELLO:

22 Q. Yeah, Exhibit 3 is Mr. Trautner's letter  
23 of intent, correct?

24 A. Okay.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. And we already established, I think, by  
2 talking earlier that it offered CMGT one of two  
3 things, half a million in cash or 20 percent of  
4 Newco's stock, right?

5 A. It offered CMGT?

6 MR. JOYCE: Right.

7 BY THE WITNESS:

8 A. Oh, yes. Okay.

9 MR. JOYCE: We went through --

10 BY MR. MARINELLO:

11 Q. Okay.

12 MR. JOYCE: -- that before. You're correct.

13 BY MR. MARINELLO:

14 Q. Now, let's go back to what you were  
15 pointing out to under Stock Compensation.

16 A. Um-hum.

17 Q. You pointed out that

18 Paragraph 1(b)(i) --

19 A. Um-hum.

20 Q. -- says, "At such time as CMGT receives  
21 and accepts a term sheet."

22 A. Um-hum.

23 Q. Is Trautner's letter of intent a term  
24 sheet?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. I don't know.

2 Q. Is it -- okay.

3 It also says, "At such time as CMGT  
4 receives and accepts a term sheet or other  
5 commitment --"

6 A. Right.

7 Q. -- from an investor."

8 A. Um-hum.

9 Q. Do you think Mr. Trautner's letter of  
10 intent is a -- a term sheet or other commitment  
11 from an investor?

12 A. Oh, I suppose it be could read that way.

13 Q. Well, is a letter -- do you understand a  
14 letter of intent to be a commitment?

15 A. Well, it might be a commitment.

16 Q. All right. Let's just --

17 A. Depending on -- depending on -- on how  
18 it -- it eventually plays out. I mean, I don't  
19 know.

20 Q. Is a letter of intent a commitment?

21 MR. JOYCE: He's already answered that  
22 question.

23 BY MR. MARINELLO:

24 Q. Maybe as it plays out --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. It says --

2 Q. -- it can be --

3 A. It says --

4 Q. -- a commitment, but is --

5 A. It says "other commitment." It doesn't  
6 say "a commitment."

7 Q. Okay.

8 A. So it says "other commitment" and a --  
9 and a -- you know, you could read it to indicate  
10 that --

11 Q. Um-hum.

12 A. -- a -- a letter -- a letter of  
13 agreement like this may be some type of other  
14 agreement. I mean, I --

15 Q. Okay.

16 A. It -- it -- it's hard to tell, but it's  
17 certainly within the bounds of interpretation,  
18 and -- and on top of that, it said, "Old" --  
19 "Oldco," which I assume to be the old company,  
20 "will receive an assurance that Newco's initial  
21 capitalization will be at least \$2½ million."

22 So this transaction would not only  
23 result in cash or shares, but that the shareholders  
24 would end up with a company that had capitalization

1 of at least \$2½ million. I would think that --

2 Q. Well, let me -- let me ask you --

3 A. -- that would --

4 Q. Let me ask you about that, okay? I  
5 mean, I -- I really think you're taking quite a lot  
6 of liberty with the -- with the words in front of  
7 you.

8 First of all, isn't it clear from  
9 Mr. Trautner's letter of intent that CMGT gets one  
10 of two things, \$500,000 in cash is one possibility,  
11 right?

12 A. Um-hum.

13 Q. Yes?

14 A. Yes.

15 Q. And the other possibility -- it's not  
16 100 percent of the stock of Newco, is it? It's  
17 20 percent, right?

18 A. Yes.

19 Q. And Newco is going to have a  
20 capitalization of \$2½ million, right?

21 A. Right.

22 Q. If you have 20 percent --

23 A. Um-hum.

24 Q. -- of a company that has a

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 capitalization of \$2½ million, is -- what is that  
2 worth? Isn't that worth about \$500,000 in capital,  
3 20 percent of 2½ million?

4 MR. JOYCE: Aren't you arguing now about  
5 what --

6 MR. MARINELLO: I'm asking him his  
7 understanding.

8 BY MR. MARINELLO:

9 Q. Isn't that right?

10 A. Maybe.

11 Q. Okay. Well, then let's go back to  
12 Exhibit 2 and that Paragraph 1(b)(i) that you  
13 cited.

14 Let's assume for the sake of argument  
15 that Mr. Trautner's letter of intent is a term  
16 sheet or other commitment. Doesn't it say that it  
17 has to be for a minimum of a million dollars?

18 A. That particular paragraph says so.

19 Q. Okay. So would this stock compensation  
20 even apply?

21 A. Well, I don't know. You're -- you're  
22 assuming that the valuation at the time of closing  
23 is -- is it. If there was an initial contribution  
24 of \$2½ million, it's conceivable that the actual



DAVID GROCHOCINSKI, JANUARY 19, 2009

1 value of the company on a go-forward basis, which  
2 is what you're assuming, may be substantially more  
3 than \$2½ million. Going concerns have values more  
4 than simply dollars in the bank.

5 Q. Was this a new company or a going  
6 concern?

7 A. Well, this is going to be -- this was a  
8 going concern. This would have been --

9 Q. Is Newco a going concern or a brand new  
10 company?

11 MR. JOYCE: Before or after the closing?

12 BY THE WITNESS:

13 A. Yeah.

14 BY MR. MARINELLO:

15 Q. At the closing.

16 A. Well, it would have been a new --  
17 it's -- it's essentially taking over the old  
18 company and going forward, so it's a --

19 Q. Oh, I see. So -- so taking over the  
20 business of a company that's had tremendous losses  
21 and financial troubles suddenly makes the company  
22 worth a lot more than the capitalization?

23 MR. JOYCE: Well, that -- that -- hold on.  
24 That's -- that's your characterization. I mean,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 you're sitting here characterizing it as a company  
2 that wasn't worth a damn thing, okay? So if you --  
3 if you have your characterization --

4 BY MR. MARINELLO:

5 Q. Do you know otherwise?

6 A. I'm just suggesting to you that you --  
7 that your questions don't necessarily assess the  
8 financial situation of a company.

9 If somebody is going to put \$2½ million  
10 into a company and has a bunch of software and  
11 other IP information and it's going forward, it may  
12 have a substantial value on a go-forward basis and  
13 it's now a company that may be worth many times  
14 \$2½ million.

15 Q. What --

16 A. So --

17 Q. What IP --

18 A. -- I don't really know the answer to the  
19 question.

20 Q. What IP information did -- was Newco  
21 going to have from CMGT?

22 A. It's the software.

23 Q. The -- that's the same software you sold  
24 to Mr. Spehar for \$1500, is that correct?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. That's a liquidation value.

2 Q. Oh, I see. And --

3 A. There's a different value for ongoing.

4 Q. I see. Okay. So your claim is that by  
5 taking this -- this software that you sold for  
6 \$1500 and putting it into a new company, suddenly  
7 it could be worth many, many, many times that?

8 MR. JOYCE: That's not --

9 BY MR. MARINELLO:

10 Q. Is that your testimony?

11 MR. JOYCE: That's not his claim at all.

12 BY THE WITNESS:

13 A. And you got to --

14 MR. JOYCE: Hold on.

15 BY THE WITNESS:

16 A. -- understand --

17 MR. JOYCE: Hold on. Hold on.

18 MR. MARINELLO: Wait. I want an answer from  
19 the witness, not from you.

20 MR. JOYCE: He's not going to accept your  
21 characterization. If you want to ask a --

22 MR. MARINELLO: He doesn't have to.

23 MR. JOYCE: -- question, ask a question.

24 MR. MARINELLO: I did.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: That -- no. That -- that was your  
2 characterization of his answer.

3 MR. MARINELLO: Well, I asked --

4 MR. JOYCE: He's not -- he's not required  
5 to --

6 BY MR. MARINELLO:

7 Q. Is it your position, sir --

8 MR. JOYCE: Hold on. He's not --

9 BY MR. MARINELLO:

10 Q. Is it your --

11 MR. JOYCE: Hold on. He's not required to  
12 accept your characterization --

13 MR. MARINELLO: Okay.

14 MR. JOYCE: -- nor to say whether you did it  
15 accurately.

16 MR. MARINELLO: Well, you know, let's move on.  
17 Let's move on.

18 MR. JOYCE: Go ahead. You're doing it,  
19 finally.

20 BY MR. MARINELLO:

21 Q. Well, let's just -- let me ask you this:  
22 Are you aware of any other software, IP  
23 information, IP assets of any kind that Newco was  
24 going to acquire from CMGT other than the software

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 that you sold to Spehar Capital for \$1500?

2 A. I don't know. The only thing that was  
3 left at the time of the -- of the involuntary was  
4 that software that I sold.

5 Q. Do you have any information that would  
6 suggest to you that there was ever anything more  
7 than that?

8 MR. JOYCE: He said he didn't know.

9 BY THE WITNESS:

10 A. I don't know.

11 BY MR. MARINELLO:

12 Q. Okay. Thank you.

13 I would ask you to look at Paragraph 56  
14 of your complaint. In this paragraph, you say that  
15 "Givens' advice to New" -- "to Franco was negligent  
16 in that Given knew or should have known that SC  
17 would file a lawsuit if CMGT did not settle and  
18 that litigation with SC would be fatal to CMGT's  
19 attempts to obtain financing."

20 Where did that -- what's your factual  
21 basis for that information?

22 A. I think that, given some of the e-mails  
23 that I've seen, that you brought to my attention --  
24 and I don't recall what exhibit it was or which one

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 it was -- it appeared to me that Mr. Given knew  
2 that a lawsuit would be filed.

3           Whether it turned out to be fatal to his  
4 attempts to obtain financing is a conclusion based  
5 on that, because I -- it's unlikely that somebody  
6 would give financing to a company that's involved  
7 in substantial commercial litigation without  
8 getting it resolved at the time of closing.

9           I suppose it's always possible, but my  
10 view is that it's not.

11           Q.     Um-hum.  So what do you think Mr. Given  
12 should have done to prevent that lawsuit from being  
13 filed by SC?

14           A.     I think he should have tried to settle  
15 it.

16           Q.     Do you know that he didn't try to settle  
17 it?

18           A.     It -- it doesn't look like it got done.  
19 I don't recall seeing any specific proposals that I  
20 can recall, but I -- maybe I'm in error and I  
21 don't -- just don't recall them, but I don't  
22 remember seeing a proposal that says we're going to  
23 pay you XYZ, or we'll do something else for you in  
24 order to try to settle it.  Maybe there is, but I

1 don't recall it.

2 Q. Okay.

3 A. So --

4 Q. Do you know whether CMGT had any money  
5 with which to pay Mr. -- Spehar Capital X, Y, or Z?

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

7 Q. If -- if CMGT did not have any money to  
8 pay Spehar Capital, how could CMGT pay Spehar  
9 Capital money?

10 MR. JOYCE: Well, that -- obviously you have  
11 figured that one out, right? That's a brilliant  
12 question. He was talking about a settlement, so  
13 you propose -- you pose a question that --

14 MR. MARINELLO: Yeah.

15 MR. JOYCE: -- makes it impossible.

16 MR. MARINELLO: Well, I mean, he's sitting  
17 here saying, "Oh, well, they could have paid him  
18 money."

19 BY MR. MARINELLO:

20 Q. You don't know that they had any money  
21 to pay him, do you?

22 A. I -- I don't know that they had any  
23 money.

24 Q. Do you have any --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. But they may have had any -- maybe at  
2 that time CMGT was still an operating entity or had  
3 an opportunity to continue to operate. They could  
4 have tried other means of resolving the dispute  
5 with Mr. Spehar.

6 Q. Well, let's stick on --

7 A. But -- but --

8 Q. -- money for a second --

9 A. But --

10 Q. -- for a second. Do you know if it had  
11 any money?

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

13 MR. JOYCE: He said --

14 BY THE WITNESS:

15 A. I don't know.

16 MR. JOYCE: -- he doesn't know. He's  
17 already --

18 BY MR. MARINELLO:

19 Q. Do you know --

20 MR. JOYCE: -- said that.

21 BY MR. MARINELLO:

22 Q. -- if it was operating at a loss or not?

23 MR. JOYCE: You already asked that before. He  
24 didn't know. You must have a --



1 BY MR. MARINELLO:

2 Q. So you don't --

3 MR. JOYCE: -- bad memory.

4 BY MR. MARINELLO:

5 Q. You don't have -- do you have any basis  
6 whatsoever for -- for suggesting that CMGT had  
7 money to pay Mr. Spehar or his company?

8 A. General Motors is operating at a huge  
9 loss, and they're still manufacturing cars. So it  
10 just goes to show you in this country that just  
11 because you have an operating loss doesn't mean  
12 that the company can't survive in some fashion or  
13 another.

14 Q. My question is --

15 A. Perfect example.

16 Q. My question to you is very simple.

17 Do you have any factual basis whatsoever  
18 for believing that CMGT had money with which to pay  
19 Mr. Spehar?

20 MR. JOYCE: He -- he answered that question.

21 BY THE WITNESS:

22 A. I don't know if it had money or not, but  
23 that --

24

1 BY MR. MARINELLO:

2 Q. Okay.

3 A. -- doesn't --

4 Q. And you've --

5 A. -- mean it didn't have --

6 Q. -- never bothered to find out?

7 A. It doesn't mean that they don't have  
8 other assets in which to do it.

9 Q. Are you aware of any assets that they  
10 had to do it with?

11 A. They -- maybe they had their contract  
12 rights with the other companies in the development  
13 of the software.

14 Q. I'm asking you if you know of any assets  
15 they had.

16 A. No, I don't --

17 Q. Okay. And when --

18 A. -- know when that --

19 Q. -- you took over the company, you didn't  
20 find any, did you?

21 A. It's a liquidating concern.

22 Q. Did you --

23 A. It was out of business.

24 Q. -- find any assets when you took over

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 the company?

2 A. That asset of a -- of an operating  
3 company, a going concern, had already terminated.

4 So that is --

5 Q. Fine.

6 A. -- not -- no longer an --

7 Q. Did you --

8 A. -- asset.

9 Q. -- find any other assets?

10 A. I told you at the beginning; the only  
11 asset that there was that I could see was the  
12 software and a potential cause of action. That's  
13 all.

14 Q. Right, and the potential cause of action  
15 is the very thing we're talking about right now,  
16 right?

17 A. At the time of liquidation, it's --

18 Q. So let's --

19 A. -- the only thing.

20 Q. Yeah, so let's -- let's go back to in  
21 time to when Spehar raised its claim and you say  
22 that Given should have settled it.

23 What assets do you believe CMGT had at  
24 that time that it could have used to settle the

1 case with Spehar?

2 A. I assume at that time -- I think at that  
3 time, if I'm not mistaken, CMGT was still  
4 operating.

5 Q. What income did it have?

6 A. It -- you're assuming that you have to  
7 have income in order to settle. Why did --

8 Q. What cash did it have?

9 A. Why didn't they give Spehar an interest  
10 in the company?

11 Q. Do you have any idea whether Spehar was  
12 willing to take that?

13 A. You asked the question.

14 Q. I'm asking you right now.

15 A. You're asking if I know of any assets,  
16 and I just told you this was an operating company.  
17 Operating companies have ability to resolve matters  
18 without simply having cash on hand.

19 Q. Are you aware of any assets that they  
20 had that they could have offered to Mr. Spehar?

21 A. It's an operating company.

22 Q. Any assets that you're aware of that  
23 they could have offered?

24 A. What assets are you referring to?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Any. Are you -- are aware of -- can you  
2 identify --

3 A. Again --

4 Q. -- one?

5 A. -- you'll have to be more specific. The  
6 company itself is an asset.

7 Q. So your position is they could have  
8 offered Mr. Spehar stock in the company?

9 A. Could have. I didn't say they --

10 Q. And do you think --

11 A. -- had to.

12 Q. And -- and is that what Mr. Spehar was  
13 after?

14 A. I don't know. I never asked Mr. Spehar.

15 Q. Okay.

16 A. Wasn't mine to settle. It happened to  
17 me after it was done.

18 Q. Should Mr. Given have recommended  
19 settlement if Spehar's claim was without merit?

20 A. I'm a bankruptcy lawyer, so I'm going to  
21 answer that as I would a bankruptcy lawyer.

22 Sometimes people settle things, good bad  
23 or otherwise, in order for their business or their  
24 operations of their company to survive, and that's

1 a business call.

2 That's a judgment call that needs to be  
3 assessed between the various parties who are in  
4 charge. If they felt like they wanted to go  
5 forward and litigate the issue, that's fine.

6 If they want to resolve an issue, then  
7 settlement and compromise is certainly acceptable,  
8 and so sometimes people settle things for lots of  
9 different reasons, whether it's valid or not valid.

10 Q. Do you know whether the shareholders of  
11 CMGT were interested in settling with Mr. Spehar?

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

13 Q. Do you know whether Mr. Franco was  
14 interested in -- in settling with Mr. Spehar?

15 A. I don't know.

16 Q. Do you know whether Mr. Franco and the  
17 other shareholders of CMGT at that point in time  
18 just wanted to quit the business and let it  
19 disappear?

20 A. Maybe they did. I don't know the answer  
21 to that.

22 Q. Is it your view that the shareholders of  
23 the company are entitled to walk away from the  
24 company if they so choose?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: That's irrelevant to this case.

2 I mean -- but you can answer it it.

3 BY THE WITNESS:

4 A. Shareholders can close up a company any  
5 time they feel like it.

6 BY MR. MARINELLO:

7 Q. Do you know whether that's the decision  
8 that they made in this case?

9 A. Don't know the answer to that.

10 Q. Do you know whether anybody from CMGT at  
11 any point in time tried to find counsel to  
12 represent the company in litigation in California?

13 A. No.

14 Q. You don't know?

15 A. You mean other than Mr. Given?

16 Q. Yes.

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

18 Q. Don't know the answer to that? Do you  
19 know whether they decide -- anybody at -- at CMGT  
20 made a decision that it was going to be too  
21 expensive to hire counsel and just wasn't worth the  
22 effort?

23 A. No.

24 Q. Do you know if Given ever talked to

1 Franco about settlement?

2 A. I don't know what Mr. Franco and  
3 Mr. Given talked about.

4 Q. Um-hum. Do you know whether Mr. Given  
5 recommended settlement to Mr. Franco under certain  
6 circumstances?

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

9 Q. So you don't really know whether Given's  
10 advice was negligent in that Given knew and should  
11 have known that, if the case didn't settle, Spehar  
12 Capital would -- would -- would file litigation?

13 A. Well, apparently they never transmitted  
14 that information to Mr. Spehar, so whatever they  
15 discussed between themselves was discussion between  
16 themselves, but certainly it didn't result in a  
17 resolution that would have maybe settled or  
18 compromised CMGT's problem with Mr. Spehar.

19 Q. So what you're saying is, because there  
20 was no settlement, it must have been that Mr. Given  
21 never recommended settlement and was negligent, is  
22 that what you're saying?

23 A. No, not necessarily.

24 Q. Okay. You say here that CMGT had not



DAVID GROCHOCINSKI, JANUARY 19, 2009

1 made a good faith attempt to resolve a dispute.

2 What is your factual basis for that?

3 A. I didn't see any type of a resolution  
4 that was provided to Mr. Spehar to see if they  
5 could get rid of this case.

6 Q. You mean, you didn't see a settlement  
7 proposal to Mr. Spehar?

8 A. I -- not that I can recall.

9 Q. Didn't they suggest to Mr. Spehar that  
10 he wait until the transaction with Trautner closed  
11 and then have his claim for compensation be  
12 litigated at that point or otherwise resolved?

13 MR. JOYCE: Is that a settlement, or is this a  
14 new question?

15 BY THE WITNESS:

16 A. That doesn't sound like a settlement to  
17 me. I mean, I don't -- why would somebody that's  
18 contingent upon the sale have to litigate it after  
19 the sale closed? That doesn't sound like much --

20 BY MR. MARINELLO:

21 Q. Well, it isn't your --

22 A. -- of a settlement to me.

23 Q. -- understand -- isn't it your  
24 understanding that Mr. Spehar was claiming he had a

1 right to compensation if the transaction closed?

2 A. Yeah, but you're -- you're presuming --

3 Q. Well, I'm -- let me --

4 A. Your question --

5 Q. I'm -- I'm talking --

6 A. -- says it --

7 Q. I'm taking it --

8 A. -- closes and now --

9 Q. -- one step at a time.

10 A. -- he gets to sue. I don't -- doesn't  
11 sound like a settlement to me.

12 Q. Let me ask you --

13 A. I don't know.

14 Q. Let me -- let --

15 A. Maybe I'm nuts, but --

16 Q. Well, let's -- let's take it a step at a  
17 time. If the company didn't have anything to offer  
18 Mr. Spehar and --

19 MR. JOYCE: I'll object --

20 BY MR. MARINELLO:

21 Q. -- the company suggested --

22 MR. JOYCE: -- to that premise. We've already  
23 spent about a half hour proving that premise is  
24 just nonsense.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. MARINELLO: All right. You know, it's not  
2 nonsense, but -- your position is nonsense, but I  
3 don't want to argue with you. We're going to  
4 disagree about this case until the end of time.

5 MR. JOYCE: I don't think so. I think it will  
6 end before the end of time, unless you know  
7 something that I don't know.

8 If the world is going to end pretty  
9 soon, why don't we quit this deposition and do  
10 something fun?

11 BY MR. MARINELLO:

12 Q. Okay. In Paragraph -- hang on a second.

13 In Paragraph 58 of your complaint, you  
14 say that, "On information and belief, Given  
15 negligently advised CMGT not to appear and defend  
16 the SC lawsuit." What is that based on? What are  
17 the facts that that's based on?

18 A. Again, I -- I think I answered this  
19 before. I thought that I saw something in the  
20 documents or something from Mr. Franco to indicate  
21 that -- or maybe one of the other shareholders, for  
22 all I know, to indicate that Mr. Given advised  
23 about the jurisdiction that there was no basis on  
24 the -- on the injunction and not to file an

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 appearance.

2 Q. Is there anything that you've seen that  
3 Mr. Given wrote where he said, "Don't appear in  
4 California"?

5 A. I -- not that I recall.

6 Q. Is there anything you saw that Mr. Given  
7 wrote where he said, "Don't appear in California,  
8 because the California Courts don't have  
9 jurisdiction and you don't have to worry about that  
10 lawsuit in California"?

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

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

15 MR. JOYCE: That's enough.

16 BY THE WITNESS:

17 A. Not that I've seen in writing.

18 BY MR. MARINELLO:

19 Q. Okay. Is there anything you've seen  
20 that anybody else wrote, put in writing, that said,  
21 "Mr. Given has told us that CMGT should not appear  
22 in the California lawsuit"?

23 A. I thought so, but I -- you know, it's  
24 been a long time since I've seen these documents,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 and I just don't recall, but I know that I've seen  
2 something like that, but I just --

3 Q. You can't identify it?

4 A. Well, there's thousands of documents.

5 MR. JOYCE: But he's -- he's --

6 BY THE WITNESS:

7 A. I'm sorry. I --

8 MR. JOYCE: You've asked that question, I  
9 think --

10 BY MR. MARINELLO:

11 Q. Can you identify --

12 MR. JOYCE: -- three times.

13 BY MR. MARINELLO:

14 Q. -- what it is --

15 MR. JOYCE: He said he doesn't know what it  
16 is.

17 BY MR. MARINELLO:

18 Q. -- you're referring to?

19 A. I -- I can't remember if it was  
20 something that one of the shareholders said,  
21 something that I saw in another e-mail, something  
22 that came across my desk, something that was in the  
23 Franco documents, something that Franco, in fact,  
24 said to me. I just don't recall right now. I'm

1 sorry.

2 Q. Um-hum. Okay. Let's turn to exhibit --  
3 excuse me one second.

4 MR. JOYCE: By the way, this complaint we have  
5 does not have all the exhibits.

6 MR. MARINELLO: I'm sorry?

7 MR. JOYCE: The complaint does not have all  
8 the exhibits.

9 MR. MARINELLO: The one I gave the witness  
10 certainly does. I think your does, too.

11 MR. JOYCE: No, it doesn't.

12 MR. MARINELLO: Which one are you missing?

13 MR. JOYCE: I'm missing several, actually.

14 I think I start with 13, but I'm  
15 missing -- let me just --

16 MR. MARINELLO: You know what -- let me tell  
17 what that is, Ed. The -- in your complaint, you  
18 had two tabs that were both marked Exhibit 12, and  
19 one is in fact -- should be Exhibit 13.

20 MR. JOYCE: I haven't got 14 either.

21 MR. MARINELLO: Well, you know what,  
22 afterwards, we'll --

23 MR. JOYCE: That's okay. I --

24 MR. MARINELLO: -- try to straighten that out.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: It isn't a big deal.

2 MR. MARINELLO: Okay.

3 MR. JOYCE: I mean, if -- if -- if you ask to  
4 look at it, I'll look over his shoulder.

5 BY MR. MARINELLO:

6 Q. Okay. Let's look at Exhibit 12 for a  
7 second, okay, Mr. Grochocinski?

8 A. Um-hum.

9 Q. And, in particular, I'm looking at --  
10 begins with an e-mail from Ron Given. Do you see  
11 that?

12 MR. JOYCE: My 12 is an August 26, '03 CMGT  
13 letter.

14 MR. MARINELLO: Look at the one right before  
15 that.

16 BY THE WITNESS:

17 A. From Robert Carroll?

18 MR. JOYCE: I don't have -- the one before it  
19 is -- hold on. 24, it's a three-page e-mail.

20 MR. MARINELLO: There you go. That's it.

21 MR. JOYCE: -- from Given --

22 MR. MARINELLO: Yeah, that's the -- that's  
23 Exhibit -- the Exhibit 12 I'm talking about.

24

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 BY MR. MARINELLO:

2 Q. You've got it, don't you  
3 Mr. Grochocinski?

4 A. From Robert Carroll?

5 MR. JOYCE: I see. There's two 12s. Yeah,  
6 okay.

7 BY THE WITNESS:

8 A. So Robert Carroll from Given?

9 MR. JOYCE: No.

10 BY MR. MARINELLO:

11 Q. No.

12 MR. CISZEWSKI: It was printed out by Carroll.

13 BY THE WITNESS:

14 A. Oh.

15 BY MR. MARINELLO:

16 Q. It was printed out by Carroll, but  
17 it's --

18 A. Oh, okay.

19 Q. But, look, it's Ronald Given to --

20 A. Given to --

21 MR. JOYCE: gspe --

22 BY THE WITNESS:

23 A. Spehar.

24



1 BY MR. MARINELLO:

2 Q. Lou Franco and so forth, correct? Do  
3 you have the page?

4 A. I have it.

5 Q. Okay. All right. Now, if you turn the  
6 page to the second page of Exhibit 12, that is an  
7 e-mail from Mr. Spehar to Lou Franco and Ron Given,  
8 correct, dated August 19, 2003?

9 A. I'm sorry. Say that again. I  
10 apologize.

11 Q. Yeah. That's an e-mail from Gerry  
12 Spehar to Lou Franco and Ron Given dated August 19,  
13 2003.

14 MR. JOYCE: Right.

15 BY MR. MARINELLO:

16 Q. Do you see that?

17 A. Yes, I see it now.

18 Q. Okay. I'm going to ask you to look at  
19 the body of the second paragraph where it says,  
20 "Thus, Chuck and his investor group should also be  
21 immediately informed that both the Newco  
22 contemplated in Chuck's LOI and Oldco, CMGT, would  
23 be obligated to honor Spehar Capital's contract  
24 with CMGT." Do you see that?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. I see what it says.

2 Q. So isn't it your understanding that  
3 Mr. Spehar was taking the position that the new  
4 company that Chuck Trautner wanted to start --

5 A. Um-hum.

6 Q. -- was going to still have to abide by  
7 the contract that Mr. Spehar -- Spehar Capital had  
8 made with CMGT?

9 MR. JOYCE: That's what it says, yeah.

10 BY THE WITNESS:

11 A. That's what it says, yeah.

12 BY MR. MARINELLO:

13 Q. Okay. And didn't that mean, among other  
14 things, that Spehar Capital was going to be  
15 involved in any financing and other transactions  
16 that Newco did in the future?

17 A. I don't know if that's the case or not.  
18 I'm not sure.

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

21 A. Well, I -- I'm not sure that I  
22 necessarily have to come to that -- to that  
23 conclusion or not.

24 Q. Um-hum. And do you know whether

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Mr. Trautner was willing to have Spehar Capital  
2 involved in his Newco venture?

3 A. I don't know.

4 Q. Okay. And if you would turn to the next  
5 document, which is -- the next document is also  
6 marked Exhibit 12.

7 MR. MARINELLO: That should be 13, if you want  
8 to correct that.

9 MR. JOYCE: Okay.

10 MR. MARINELLO: Okay? And then if we turn to  
11 yet the next exhibit, that's Exhibit 14. That's  
12 the Touch Speed corporate documents. Don't you  
13 have that?

14 MR. JOYCE: I think I did do.

15 MR. MARINELLO: Okay.

16 MR. JOYCE: I do have 14, yeah.

17 MR. MARINELLO: And then 15 -- Exhibit 15 is a  
18 e-mail from Mr. Given to Lou Franco and all the  
19 other shareholders of CMGT. Do you see that?

20 MR. JOYCE: I got -- I got that, yeah.

21 MR. MARINELLO: Okay. That's dated  
22 December 17 of 2003.

23 MR. JOYCE: Yes.

24 BY MR. MARINELLO:

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Do you have that, Mr. Grochocinski?

2 A. I believe so. I'm just going to get  
3 there.

4 Q. Okay.

5 A. Yeah, September 17th, 2003, Mr. Given to  
6 Lou Franco, Wong, and a whole bunch of other  
7 people.

8 Q. Okay. And those other people are the  
9 shareholders of CMGT, correct?

10 A. Looks like it. I don't know if it's all  
11 of them, but it looks like a lot of them.

12 Q. Okay. And the fax that's attached, do  
13 you know what that is?

14 A. Looks like a facsimile cover sheet, a  
15 letter to Mr. Given and a copy of a order to show  
16 cause, re: preliminary injunction, temporary  
17 restraining order in California.

18 Q. Okay. And Mr. Given sent a copy of that  
19 TRO to every -- to the shareholders of CMGT so that  
20 they wouldn't -- and they -- so to -- to advise  
21 them that this -- that he'd received this order  
22 from the California Court, correct?

23 A. I assume.

24 Q. All right.

1 A. I don't know what the reason, but, yes,  
2 that's what it looks like.

3 Q. In his e-mail Mr. Given says that  
4 "Mayer Brown has not been retained to deal with  
5 this matter and we do not expect to be." Do you  
6 see that?

7 A. I do.

8 Q. That put -- at the very least, that put  
9 every shareholder on notice that from that date  
10 forward, Mayer Brown was not going to represent  
11 CMGT in the litigation in California, correct?

12 A. That's what it says.

13 Q. And that's -- okay. And so from that  
14 date forward, any of the shareholders who got this  
15 e-mail from Mr. Given should have known that  
16 Mayer Brown was not going to represent the company  
17 from that point forward, at least in any litigation  
18 in California, correct?

19 A. Mr. Given said that he was not going to  
20 be retained.

21 MR. JOYCE: No, he didn't say that.

22 BY THE WITNESS:

23 A. Mayer Brown was going to be --

24 MR. JOYCE: He didn't say that at all. Why

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 don't you read what he says.

2 THE WITNESS: It says, "Mayer Brown has not  
3 been retained to deal with this matter --"

4 MR. JOYCE: And?

5 THE WITNESS: "-- and we do not expect to be."

6 MR. JOYCE: Okay.

7 THE WITNESS: That's what it says.

8 BY MR. MARINELLO:

9 Q. Are you aware that -- that Mayer Brown  
10 ever was retained to represent CMGT in California?

11 A. You mean specifically in terms of a  
12 writing?

13 Q. In any way whatsoever.

14 A. Well, it's my view that they still  
15 continue to have an obligation.

16 Q. I didn't ask you that question. I asked  
17 you whether they ever -- this letter says, "We have  
18 not been retained, and we do not expect to be."

19 Do you know whether as of that date CMGT  
20 had retained Mayer Brown to represent it in the  
21 litigation in California?

22 A. I think the retention was ongoing. So  
23 if --

24 Q. Based on --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. -- you're asking me --

2 Q. Based on what was that?

3 A. I believe they continued to represent  
4 CMGT. They were -- they had an obligation to -- to  
5 represent them.

6 Q. And why did they have an obligation to  
7 go out to California and represent them there?  
8 Based on what?

9 A. Their general representation of them as  
10 counsel.

11 Q. You have attached to your complaint a  
12 copy of their engagement letter, correct?

13 A. I -- I don't recall, but okay.

14 Q. Well, does the engagement letter say  
15 that they're going to represent CMGT in litigation?

16 A. I don't recall what it says.

17 Q. Why don't you look at it. It's  
18 Exhibit 1.

19 Oh, I'm sorry. That is not the one --  
20 yes, that's it. That's it.

21 Does that agreement say anything about  
22 representing CMGT in litigation?

23 A. I don't know. It's a pretty broad  
24 statement here.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Um-hum.

2 A. It says, "I will be leading this  
3 engagement on behalf of the firm and anticipate  
4 calling upon the services of other firm lawyers on  
5 a 'as-needed' basis."

6 Q. Right. Let's look --

7 A. I don't know exactly what that means.

8 Q. Maybe you don't --

9 A. Maybe --

10 Q. -- and that's a problem for you perhaps,  
11 but let's look at Paragraph --

12 A. Well, maybe --

13 Q. -- 1.

14 A. -- it's not a problem for me. Maybe  
15 it's a problem for you.

16 Q. Let's look at the first paragraph, okay,  
17 and see about your lack of understanding and how it  
18 relates to Paragraph 1.

19 Does Paragraph 1 say that, "This letter  
20 confirms our agreement for the provision of legal  
21 services in connection with its initial  
22 capitalization, formative acquisition activities,  
23 and other related general corporate activities"?  
24 Does it say that?



DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. Yeah, it does.

2 Q. Does it say anything about litigation in  
3 that paragraph?

4 A. Litigation could arise out of those  
5 aspects.

6 Q. I asked you if it says anything about  
7 litigation in that paragraph.

8 A. Nope.

9 Q. Does it say anything about litigation  
10 anywhere else in this letter?

11 A. I think it's a very broad understanding.

12 Q. I didn't ask you that. I asked you --

13 A. Sure you --

14 Q. -- whether --

15 A. -- did. You asked me exactly that  
16 question.

17 Q. Does the word "litigation" appear in  
18 this letter anywhere?

19 A. Doesn't have to.

20 Q. Does it?

21 A. It doesn't --

22 Q. I didn't ask you --

23 A. -- have to.

24 Q. I didn't ask you if it had to.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: Let -- let -- let's take a --

2 BY MR. MARINELLO:

3 Q. Does it?

4 MR. JOYCE: Let's take a short break.

5 BY MR. MARINELLO:

6 Q. Does the word "litigation" appear in  
7 this letter?

8 MR. JOYCE: Let's take a short break, because  
9 the letter does speak for itself. Just maybe two  
10 or three minutes.

11 MR. MARINELLO: All right. Let's do that.

12 THE VIDEOGRAPHER: Going off the video record  
13 at 3:25 p.m.

14 (WHEREUPON, the deposition was  
15 recessed from 3:25 p.m. until  
16 3:40 p.m.)

17 THE VIDEOGRAPHER: Going back on the video  
18 record at 3:40 p.m., the beginning of Tape No. 5.

19 BY MR. MARINELLO:

20 Q. Okay. In Paragraph 59 of your  
21 complaint, you say that CMGT failed to appear and  
22 defend at a TRO hearing because of negligent advice  
23 provided by Given. What is the factual basis for  
24 that statement?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: You already asked that question,  
2 but --

3 BY THE WITNESS:

4 A. I thought I saw something from Mr. Given  
5 indicating that they weren't going to appear, but I  
6 could be wrong.

7 THE WITNESS: Thank you very much.

8 MR. CISZEWSKI: Sure.

9 BY MR. MARINELLO:

10 Q. Can you identify what -- what it is  
11 in -- more specifically than that?

12 A. I don't know. I'd have to look through  
13 all of this.

14 MR. CISZEWSKI: Do you want some water?

15 MR. MARINELLO: Yeah. That would be great.  
16 Thank you very much.

17 BY THE WITNESS:

18 A. I don't know. I'd have to look through  
19 some of the documents here.

20 BY MR. MARINELLO:

21 Q. Okay.

22 A. I apologize.

23 Q. Okay. Let me ask you to turn to  
24 Paragraph -- I'm sorry, to Exhibit 16.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. Okay.

2 Q. Okay. Now, Exhibit 16 is a -- an e-mail  
3 from Ron Given dated September 16, 2003, correct?

4 A. Um-hum, yes.

5 Q. And it is to the shareholders of CMGT,  
6 correct?

7 A. It appears so.

8 Q. Okay. And this e-mail advises them that  
9 the TRO has been filed and -- by -- by -- by Spehar  
10 in Los Angeles, correct?

11 A. Yes, I guess so.

12 Q. Okay. And it says in the very first  
13 paragraph that Lou Franco is reluctantly planning  
14 to leave his position with CMGT and pursue other  
15 opportunities and that representatives of Newco  
16 have said that they intend to terminate the LOI --  
17 and this is all unless the litigation filed by  
18 Spehar is withdrawn, correct?

19 A. I don't know. I'd have to read this,  
20 but --

21 Q. Well, why don't you read the first  
22 paragraph to yourself then.

23 A. That's what it says.

24 Q. Okay. Do you know -- do you have any

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 reason to doubt the truth of the statements in  
2 Paragraph 1?

3 A. I don't know.

4 Q. You have no reason to believe they're  
5 not true, do you?

6 A. I don't have a reason to believe that  
7 they are, nor do I have a reason to believe that  
8 they aren't.

9 Q. Okay. Now, I'd ask you to go to the  
10 fourth paragraph. Well --

11 A. Okay.

12 Q. Well, no, the third paragraph. The  
13 third paragraph says -- just read that to yourself.  
14 Is this the -- and then -- and then I'll ask you a  
15 question. Let me know when you're done reading  
16 that.

17 A. I've read it.

18 Q. Okay. Is that the e-mail that you're  
19 referring to when you say that you saw something  
20 that suggested that Mr. Given had said that there's  
21 no jurisdiction in California?

22 A. It's possible.

23 Q. Are you aware of anything else --

24 A. I don't know.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. -- other than that?

2 A. I'd have to look at other --

3 Q. Okay.

4 A. -- documents.

5 Q. Is this -- is this the -- the -- the  
6 e-mail or writing that you said -- where Mr. Given  
7 suggested that injunctive relief was inappropriate  
8 if all Gary Spehar was really seeking was money in  
9 California?

10 A. Certainly it's one of them. I don't  
11 know if there are any others, but --

12 Q. Can you --

13 A. -- certainly.

14 Q. Can you identify anything else?

15 A. Not at this moment.

16 Q. Um-hum. Do you have a view as to  
17 whether injunctive relief was -- would have been  
18 granted if -- if there had been a defense mounted  
19 by CMGT?

20 A. No. A Judge entered the order, so I  
21 assume the Judge entered a valid order. I don't  
22 know.

23 Q. You have no idea whether it would be  
24 appropriate or inappropriate -- strike that.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1           You have no idea what would have  
2 happened if there'd been a defense put up?

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

4           Q.     Okay.

5           A.     I'm not an Appellate Court.  Nobody  
6 appeared, and the Judge entered the order, so I  
7 assumed it was valid.

8           Q.     You see the next paragraph where it says  
9 spurious -- whether Spehar's actions are spurious  
10 or not, CMGT has no money to fight this battle?

11          A.     That's what it says.

12          Q.     Do you know whether that's true or not?

13          A.     I don't know.

14          Q.     Okay.  All right.  Let's turn to  
15 Paragraph 61 of your complaint, please.  It says  
16 that on October 2nd, Given notified CMGT's  
17 shareholders that because of the lawsuit, Newco had  
18 terminated the letter of intent.

19          A.     Okay.

20          Q.     Do you have any reason -- do you have  
21 any -- do you have any knowledge -- any reason to  
22 believe that that's not a true statement?

23          A.     No, I have no reason to believe yes or  
24 no or that it's true or not true.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Do you know whether Newco did or did not  
2 terminate the letter of intent?

3 A. I believe that Newco did terminate the  
4 letter of intent.

5 Q. Okay. Your next paragraph says that no  
6 one from CMGT appeared at the October 3rd  
7 preliminary injunction hearing, correct?

8 A. I believe that's the case.

9 Q. Okay. What is your basis for saying  
10 that the reason nobody from CMGT appeared is  
11 because of negligent advice provided by Given?

12 A. I believe that he indicated that he did  
13 not believe that there was a jurisdictional basis,  
14 and, for whatever reason, he chose not to appear.

15 Q. Well, we know that he chose not to  
16 appear, because he told people he wasn't going to  
17 appear back in the e-mail that he sent that you've  
18 marked as your Exhibit --

19 A. 16.

20 Q. -- 16, right?

21 A. Okay.

22 Q. No, not 16. Let's not get the wrong  
23 number.

24 A. Sorry.



DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. It's Exhibit 14 -- 15.

2 A. No. I thought it was in 16 that he said  
3 it was -- there was no jurisdictional basis. I'm  
4 sorry. Isn't this the long one that you told me --  
5 "It seems obvious there is not jurisdictional basis  
6 for Gary Spehar to bring his --"

7 Q. You're answering the wrong question.

8 A. I apologize. Maybe I don't understand  
9 the question then.

10 Q. Okay. We know Mr. Given wasn't going to  
11 appear in California, 'cause he'd already said in  
12 your Exhibit 15 that Mayer Brown had not been  
13 retained to deal with the Spehar litigation matter  
14 and did not expect to be, correct?

15 MR. JOYCE: It says that. We've said that  
16 three or four times.

17 BY THE WITNESS:

18 A. Yes.

19 BY MR. MARINELLO:

20 Q. Okay. Well, I just wanted to reference  
21 that.

22 A. Yeah, okay.

23 Q. Okay. So now he has sent everybody a  
24 copy of a TRO --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. Um-hum.

2 Q. -- and a -- with an order as to when a  
3 preliminary injunction hearing going to be held,  
4 and it's pretty clear based on what he sent  
5 everybody that the Court in California did enter a  
6 TRO, right?

7 A. Yes.

8 Q. Okay. So, obviously, the California  
9 Court wasn't concerned about jurisdiction, right?

10 MR. JOYCE: How do we know what the Court was  
11 concerned about?

12 BY THE WITNESS:

13 A. Yeah, I don't know.

14 MR. JOYCE: He can't read minds.

15 BY THE WITNESS:

16 A. All I know is that they entered the  
17 order, so...

18 BY MR. MARINELLO:

19 Q. Okay. They entered the order, so  
20 whether it did or didn't have jurisdiction really  
21 didn't make any difference with respect to the  
22 issuance of the TRO?

23 A. Well, I'm not -- all I know is that the  
24 Court entered the order, so I have to --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Okay.

2 A. -- I'm accepting --

3 Q. Okay.

4 A. -- whatever the Court did, and I --

5 Q. Okay.

6 A. -- I presume that it did what it thought  
7 it had the power to do.

8 Q. So is it your belief, then, that the  
9 reason that CMGT did not appear and defend the  
10 preliminary injunction hearing was because  
11 Mr. Given had previously told them that he didn't  
12 think there was jurisdiction in California?

13 A. I assume in part.

14 Q. And -- and that -- is that an assumption  
15 on your part?

16 A. Isn't that what he said; it seems that  
17 there is know jurisdictional basis for Gary Spehar  
18 to bring the lawsuit in California?

19 Q. Yes, he did say that, but did he say,  
20 "You don't have to appear to contest it"? I  
21 mean --

22 A. Well, he's their --

23 Q. Let me ask you --

24 A. -- attorney.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. -- this question. Let me ask you --

2 A. He's their --

3 Q. -- this question.

4 A. -- attorney. If he's telling them  
5 there's no jurisdiction --

6 Q. Well, let me ask you something. You're  
7 an attorney. You're an attorney, right?

8 A. I am.

9 Q. Have you had clients sued in places  
10 where there's no jurisdiction over them ever in  
11 your career?

12 A. I assume somewhere along the line.

13 Q. Okay. Is your advice to them, "Oh,  
14 there's no jurisdiction; don't appear," or is your  
15 advice to them, "There's no jurisdiction, so go and  
16 fight jurisdiction"?

17 A. Well, it depends on the circumstances, I  
18 guess.

19 Q. Yeah, okay. The fact of the matter is,  
20 Mr. Grochocinski, you don't know what Mr. Given  
21 said to Mr. Franco or anyone else at CMGT other  
22 than what you see in that e-mail that you've  
23 attached, correct?

24 MR. JOYCE: He's already said that you're

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 wrong on that. You've asked this question about  
2 ten different ways.

3 BY THE WITNESS:

4 A. Well, I -- I obviously was not in the  
5 same room when Mr. --

6 BY MR. MARINELLO:

7 Q. Um-hum.

8 A. -- Franco and Mr. Given spoke, so I have  
9 no idea what they --

10 Q. Um-hum.

11 A. -- actually said to one another --

12 Q. Okay.

13 A. -- but --

14 Q. And you I don't know if Mr. -- if  
15 Mr. Franco -- I'm sorry.

16 You don't know if Mr. Given said to  
17 Mr. Franco, "Oh, don't appear in California because  
18 there's no jurisdiction;" you don't know that he  
19 said that, do you?

20 A. No, not --

21 Q. And -- and all you had --

22 A. -- not in those words.

23 Q. And all you had to do was pick up the  
24 telephone and call Mr. Franco and say, "Mr. Franco,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 did Mr. Given tell you this," and you would have  
2 had an answer, wouldn't you?

3 A. I don't know if I would have had an  
4 answer or not.

5 Q. But you didn't even try and find out,  
6 did you?

7 A. I did not talk to Mr. Franco about this  
8 situation --

9 Q. Right, and -- and --

10 A. -- to the best of my knowledge.

11 Q. To the best of your knowledge, your  
12 lawyers never did either, did they?

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

14 Q. And you never called Mr. Given and asked  
15 him if that's what he advised either, right?

16 A. I did not personally do that, no.

17 Q. And -- and you don't know anyone who  
18 did?

19 A. Again, I don't -- did not do that.

20 Q. Um-hum, okay. Do you know anybody who  
21 did do that?

22 A. Not that I --

23 Q. Okay.

24 A. -- believe.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Okay. You say in Paragraph 63 that on  
2 December 1st -- strike that. Hold on a second.

3 Do you know whether Mr. Given gave any  
4 advice to CMGT not to appear and defend at the  
5 preliminary injunction hearing?

6 MR. JOYCE: Preliminary, okay.

7 BY THE WITNESS:

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

9 BY MR. MARINELLO:

10 Q. Okay. Have you ever asked anybody that  
11 question?

12 A. No, I did not.

13 Q. Do you know anybody who has asked  
14 anybody that question?

15 A. I don't know.

16 Q. Okay. Your Paragraph 63 of your  
17 complaint says that on December 1st, Spehar Capital  
18 served CMGT with an amended complaint seeking  
19 damages. Do you see that?

20 A. Yes.

21 Q. Do you know whether CMGT ever defended  
22 itself against that amended complaint?

23 A. I don't believe it did.

24 Q. Okay. Do you know why it didn't?

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. No.

2 Q. Okay. In Paragraph 65, you say that if  
3 Spehar Capital had not obtained its injunction,  
4 then CMGT would have closed the financing deal with  
5 Newco and would have received funding.

6 Did the Newco deal provide that CM --  
7 that CMGT would get funding?

8 A. The Newco deal, to the best of my  
9 knowledge, indicated that there would be some  
10 payment. It was -- it was going to take over  
11 Oldco, which would have been CMGT, and the new  
12 company would have been Newco, so I'm not sure that  
13 I understand the question exactly.

14 I don't know if can be answered quite  
15 the way it --

16 Q. Well --

17 A. -- you want me to answer it, so I'm not  
18 really sure.

19 Q. Well, is there any suggestion in the  
20 Trautner proposal that Trautner is going to give  
21 funding to CMGT?

22 A. Well, funding is a --

23 Q. Just -- just answer my question if you  
24 can.



DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. JOYCE: Well, he is answering your  
2 question. Don't interrupt him. Let him answer it.

3 BY THE WITNESS:

4 A. Funding is a -- a -- a different --  
5 you're assuming that -- that this is a traditional  
6 circumstance where some company is coming in to  
7 provide funding and maybe either receiving a  
8 security interest or some shares of stock or  
9 whatever.

10 The Newco deal was a -- essentially a --  
11 a buyout of Oldco, so it was more of a merger than  
12 it was anything else, and so it was a slight bit  
13 different, to the best of my understanding, than a  
14 traditional funding of a -- of a transaction at a  
15 closing where another party is coming in to provide  
16 money in exchange for shares of stock. It was  
17 different.

18 BY MR. MARINELLO:

19 Q. As you understand it, at the end -- if  
20 the Newco transaction had closed, isn't it a fact  
21 that at the end of the day, Newco would have had  
22 CMGT's assets and -- and CMGT would have had  
23 20 percent of Newco's stock?

24 A. As one of the possibilities. I remember

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 that there were other possibilities, but that's  
2 certainly one of the possibilities.

3 Q. There were two possibilities, correct?

4 A. 500,000 cash, I think, and --

5 Q. Yeah --

6 A. Or --

7 Q. Okay. Did --

8 A. -- 20 percent, I think. I -- I don't  
9 know if there's anything else in there. I don't  
10 recall, but from my --

11 Q. Didn't -- didn't the shareholders of  
12 CMGT approve the 20 percent transaction?

13 A. I don't know.

14 Q. Doesn't your complaint allege that?

15 A. I -- I'd have to look at it again, but  
16 if they did, then they did.

17 Q. Okay. What it is, it is, I guess?

18 A. I guess.

19 MR. JOYCE: Yeah. Yeah, we'll stipulate to  
20 that.

21 BY THE WITNESS:

22 A. Okay.

23 BY MR. MARINELLO:

24 Q. Okay. Your Paragraph 65 says that if

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 CMGT had received funding, it would have been a  
2 highly profitable company. What do you mean by  
3 that?

4 A. Well, I think that had it received the  
5 moneys that it was requesting, it would have been  
6 in a position to continue to operate and utilize  
7 its -- its software and its contacts that it had in  
8 the past in order to continue growing and moving  
9 forward.

10 Q. You say to continue growing. Was --  
11 in -- in 2003 when this possible deal with Trautner  
12 was being discussed, was CMGT growing at that time?

13 A. I -- I don't know. Maybe the word  
14 continued growing -- I should say it would grow.  
15 I --

16 Q. Do you know whether at that time CMGT  
17 was declining?

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

19 Q. Okay. You said that by the statement  
20 you meant that if CMGT had received the funds it  
21 was asking for. What funds was it asking for?

22 A. Well, wasn't it trying to obtain funding  
23 from various sources? I thought the number of  
24 \$2½ million was being bandied about here --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. Well --

2 A. -- from either --

3 Q. -- this doesn't --

4 A. -- Sealaska or the Indian Tribe. So,  
5 you know --

6 Q. You think it would have -- you think  
7 that the Sealaska -- some -- one of those Indian  
8 Tribes was about to give them money?

9 A. I don't know, because the transactions  
10 didn't close.

11 Q. Okay. But Paragraph 65 of your  
12 complaint says that if the injunction hadn't been  
13 obtained, that CMGT would have closed the deal with  
14 Newco, right?

15 A. I believe that that's the truth.

16 Q. Right, and if it had closed the deal  
17 with Newco, then at the end of the day, CMGT would  
18 have had 20 percent of Newco's stock, right?

19 A. Yes.

20 Q. Okay. It wouldn't have had any money,  
21 would it?

22 A. Well, I don't know. 20 percent of an  
23 ongoing company might be worth a lot of money.

24 Q. Might be, but it would get 20 percent of

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 the stock; it wouldn't get any cash in that  
2 transaction?

3 A. Well, cash doesn't necessarily mean  
4 value.

5 Q. I'm just asking you a question.

6 A. Yes, but -- to the best of my knowledge,  
7 no, they would not receive cash. They would  
8 receive --

9 Q. Right.

10 A. -- stock.

11 Q. Right. The deal provided for stock, not  
12 more money, right? Not for funding, right?

13 A. That's correct.

14 Q. Okay. So if -- so CMGT wasn't going to  
15 get any funding out of that Newco deal, it was just  
16 going to get 20 percent of the stock, and if  
17 anybody was going to be profitable, it was going to  
18 be Newco --

19 A. You're assuming --

20 Q. -- right?

21 A. -- that -- that cash and funding are  
22 equivalent. I'm not assuming that at all.

23 Q. I'm not making any such --

24 A. Value is value.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 Q. I'm not making any such assumption at  
2 all. I'm just pointing --

3 A. That's exactly what you said.

4 Q. I'm pointing out the fact that if the  
5 Newco deal closed, as you allege in Paragraph 65 of  
6 your complaint, what would have happened, by your  
7 own documents and words, is that there would have  
8 been a company, Newco, that would have owned CMGT's  
9 assets?

10 A. Yes.

11 Q. And all CMGT would have had is  
12 20 percent of the Newco's stock, correct?

13 A. Yes.

14 Q. Okay. So if anybody was going to become  
15 a highly profitable company, it was going to be  
16 Newco 'cause Newco was the company that was  
17 continuing the business, right?

18 A. But CMGT would have had 20 percent.

19 Q. Okay. That's right. CMGT would have  
20 had 20 percent of Newco, correct?

21 A. That's --

22 MR. JOYCE: We've gone over this.

23 MR. MARINELLO: Okay.

24 MR. JOYCE: -- about five times.

1 BY THE WITNESS:

2 A. That's what it says.

3 BY MR. MARINELLO:

4 Q. That's not what it says, but I think  
5 we've clarified. All right.

6 What value did CMG have -- CMGT have in  
7 your value -- in your -- in your view as of, let's  
8 say, September 1st, 2003?

9 A. I don't know. I haven't done that  
10 analysis.

11 Q. Do you -- do you know that it had any  
12 value?

13 A. I don't know. I haven't done the  
14 analysis.

15 Q. Okay. You allege in Paragraph 70 that  
16 CMGT -- that defendant's negligence -- negligence  
17 caused CMGT to lose its substantial value.

18 What's the basis of your saying that  
19 CMGT had a substantial value at that time?

20 MR. JOYCE: That's 70, you say?

21 MR. MARINELLO: Yes.

22 BY MR. MARINELLO:

23 Q. Can you answer my question?

24 A. I don't even know what the question is

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 now.

2 MR. MARINELLO: Would you repeat it to him,  
3 please.

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

6 BY THE WITNESS:

7 A. A substantial value or a loss in value?

8 BY MR. MARINELLO:

9 Q. You say in your complaint in  
10 Paragraph 70 that defendants' negligence caused  
11 CMGT to lose its substantial value.

12 A. That's why I'm asking the question. Are  
13 you asking me --

14 Q. So my question to you is, how do you  
15 know that CMGT had a substantial value to lose?

16 A. Well, one of the insiders was trying to  
17 do a deal for Newco, so it must have had some value  
18 to somebody.

19 Q. Do you know whether CMGT -- I'm sorry,  
20 whether Spehar Capital had a good claim or a bad  
21 claim against Mayer Brown -- I'm sorry, against  
22 CMGT in the California litigation?

23 MR. JOYCE: You mean the injunction or the  
24 damages or any part of it?



DAVID GROCHOCINSKI, JANUARY 19, 2009

1 MR. MARINELLO: Good point. I'll take it  
2 one -- one at a time.

3 BY MR. MARINELLO:

4 Q. Do you know whether Spehar Capital had a  
5 good -- what you would view as a good claim against  
6 CMGT for a -- for injunctive relief in the  
7 California action?

8 A. I don't know.

9 Q. Do you know whether Spehar Capital had a  
10 good claim for money damages against CMGT in the  
11 California action?

12 A. Independently, I don't know.

13 Q. Have you ever investigated either of  
14 those two things?

15 A. There was a judgment entered in favor  
16 of -- of Spehar Capital. I'm just taking the Court  
17 at its -- at its word that they -- they -- he  
18 adequately proved up whatever the damages were.  
19 The Judge entered in the order. Apparently there  
20 was jurisdiction over the parties, and judgment was  
21 entered. I --

22 Q. So your understanding is that the claims  
23 that Spehar Capital had against CMGT in California  
24 were good claims, both from the point of view of

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 the injunction and from the point of view of  
2 damages?

3 MR. JOYCE: That's not what he said.

4 BY THE WITNESS:

5 A. I -- not what I -- I said. I said that  
6 I accepted the Court's entry of the judgments --

7 BY MR. MARINELLO:

8 Q. I didn't ask you --

9 A. -- at face value. I didn't make an  
10 independent assessment as to whether the -- the  
11 claims were valid or invalid.

12 Q. Well, I never asked you what you  
13 accepted or didn't accept from the Court. Maybe --

14 MR. JOYCE: But that was --

15 BY MR. MARINELLO:

16 Q. -- that's where the confusion --

17 MR. JOYCE: -- his answer. See, that's his  
18 answer.

19 MR. MARINELLO: But that was not the answer to  
20 my question.

21 MR. JOYCE: Well, no, it's not the --

22 BY THE WITNESS:

23 A. You want --

24 MR. JOYCE: -- answer you want.

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 BY THE WITNESS:

2 A. It's not the answer you want, counsel.  
3 What do you want me to answer to?

4 BY MR. MARINELLO:

5 Q. My question is very simple.

6 A. Okay.

7 Q. Did you -- did you -- did you reach a  
8 conclusion as to -- ever as to whether Spehar  
9 Capital had a good claim for injunctive relief  
10 against CMGT in the California litigation, yes  
11 or no?

12 A. No.

13 Q. Okay. And did you ever form a belief as  
14 to whether Spehar Capital had a good claim for  
15 money damages against CMGT in the California  
16 action?

17 A. No.

18 Q. Okay. I want to go back to an earlier  
19 time period, and that is -- you were appointed the  
20 trustee September 21st, correct?

21 A. I don't remember offhand, but okay.

22 Q. All right. And then you told --

23 A. That's in --

24 Q. You told me --

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 A. -- '04, right?

2 Q. Right. '04, right.

3 What I'd like to know is, as best you  
4 can recreate it, how many times did you speak to  
5 Mr. Spehar or his counsel after -- you know, during  
6 the year 2004?

7 A. I -- I -- I don't even know if I could  
8 give a -- a good estimate on that. Could have been  
9 20. Could have been 10. Could have been 50. I  
10 don't know.

11 Q. Okay.

12 A. I'm sorry.

13 Q. And those discussions began somewhere  
14 about approximately ten days after you were  
15 appointed, you said?

16 A. I had an initial conversation with  
17 Mr. Todhunter about ten days after my appointment,  
18 and then he sent me the Franco citation examination  
19 documents, and then I don't recall when I next  
20 spoke to anybody after that.

21 Q. I think we already covered your  
22 conversation with Mr. Todhunter, correct?

23 A. Yes.

24 MR. JOYCE: Yes.

1 BY MR. MARINELLO:

2 Q. And -- and you said you weren't sure if  
3 Mr. Franco was or wasn't on that call -- I'm --

4 A. No.

5 Q. -- sorry.

6 A. That was Mr. --

7 Q. I'm sorry.

8 A. -- Spehar.

9 Q. You weren't sure if Mr. Spehar was or  
10 wasn't --

11 A. Yeah.

12 Q. -- on that call?

13 A. I don't -- I just don't recall.

14 Q. All right. Approximately when was the  
15 next time you spoke to Mr. Todhunter or to  
16 Mr. Spehar?

17 A. Again, I don't know. Probably sometime  
18 after I had a chance to digest some of the -- the  
19 citation documents.

20 Q. So about how long are we talking about?

21 A. I don't know. I don't -- I'm just  
22 speculating. I really don't -- don't know.

23 Q. Few days after you got them?

24 A. Oh, I don't remember when I received

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 them exactly. I -- you know, I'd just be  
2 speculating. I'm not sure. Certainly within a  
3 couple of weeks, I would imagine.

4 Q. Okay.

5 A. I don't know if that gives you a good  
6 enough time frame or not, but that's about the best  
7 that I can do.

8 Q. All right. And did you -- did  
9 you actually -- when is the first time you had a  
10 meeting with Mr. Todhunter or with Mr. Spehar?

11 A. I don't think I actually met. I think  
12 we just talked on the phone. I didn't meet with  
13 Mr. Todhunter face to face. We just spoke on the  
14 phone.

15 Q. Did you ever meet with Mr. Spehar face  
16 to face?

17 A. No, I don't -- I don't remember seeing  
18 Mr. Spehar, frankly, at all. You know, I'm -- I  
19 know this -- I don't think I -- I met him until we  
20 had the trial in Court. I'm trying to remember if  
21 I remember seeing him.

22 Q. When you say -- when you say you had --  
23 when you refer to the trial in Court, you're  
24 talking about the litigation between you and he

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 concerning the security status of this claim?

2 A. Yes.

3 Q. And -- and the trial was approximately  
4 November 24th and 25th of 2008?

5 A. Yes.

6 Q. And so you're telling me that -- that  
7 you didn't meet with Mr. Spehar about this  
8 malpractice claim until --

9 A. I --

10 Q. -- until then?

11 A. I have to tell you something. I  
12 don't -- I don't have a recollection about meeting  
13 him face to face.

14 Q. Um-hum. And you don't have a  
15 recollection about meeting Mr. Todhunter prior to  
16 November 24, 2008 either?

17 A. Oh, no. I've seen Mr. Todhunter many  
18 times.

19 Q. Well, I mean, have you seen him about  
20 the -- met with him about the malpractice claims?

21 A. I thought that Mr. Todhunter -- we may  
22 have had -- we may have had coffee together at some  
23 point in time, but I don't -- you know, it wasn't a  
24 specific meeting to sit down and talk to him about

1 this. I mean --

2 Q. When you --

3 A. -- we may have met each other for -- you  
4 know, in Court or whatever, and we sat down and  
5 talked about the status of the -- the citation and  
6 where we were with respect to a carve-out, things  
7 of that sort, things that he was interested in.

8 Q. But you didn't talk to him about the  
9 malpractice claims at that meeting?

10 A. I really didn't talk to Mr. Todhunter  
11 much about the validity of the underlying claim.  
12 Some of that was done with Mr. Klenda, more so than  
13 with Mr. Todhunter.

14 Mr. Todhunter was really bankruptcy,  
15 local counsel, and his counsel -- his firm was  
16 hired to register the judgment in DuPage County,  
17 Circuit Court, issue the citation, conduct the  
18 citation examination of Mr. Franco, and to initiate  
19 the involuntary bankruptcy.

20 Q. Um-hum. And Mr. Klenda, did you have a  
21 meeting with him at any point in time?

22 A. No. The only time I met Mr. Klenda was  
23 in 2008 at the trial.

24 Q. Okay. Did you have conversations with



1 Mr. Klenda in the 2004 time frame after you were  
2 appointed?

3 A. I'd have to look at my documents and  
4 see. We may have had e-mail discussions during  
5 that period of time, but I think I spent most of my  
6 time determining the validity -- of what I believed  
7 the validity of the judgment and the -- and the  
8 fact that the citation was entered and the basics  
9 of what else was involved with the case.

10 In an involuntary, you have to make a  
11 determination whether there was any other assets  
12 there.

13 So for the most part, the beginning of  
14 that kind of a case, even though there's litigation  
15 possible -- I know about the litigation. I had to  
16 be told about the -- the software, and I needed to  
17 ask questions, because there are no schedules or  
18 statements of affairs, to determine if there were  
19 any other potential assets out there.

20 So that -- most of my initial first  
21 probably 30 or 40 days of the case relate to those  
22 kinds of activities.

23 Q. Um-hum. How many times did you talk to  
24 Mr. Klenda in the first 30 or 40 days after you

1 were appointed?

2 A. I have no clue, not without looking at  
3 it. I don't --

4 Q. Um-hum.

5 A. -- know if we talked or it was just  
6 e-mails.

7 Q. Um-hum.

8 A. He may have called me up to say, "Hi,  
9 how are you? I'm Steve Klenda," but I don't recall  
10 that conversation.

11 Q. Did you have conversations with  
12 Mr. Spehar during that time frame?

13 A. With -- with representation of counsel.

14 Q. Who would have -- who would have been on  
15 the phone call --

16 A. It would have --

17 Q. -- with him?

18 A. -- been Mr. Todd and/or Mr. Klenda, if  
19 at all.

20 Q. Okay. And that's the 10, 20, 30, 50,  
21 you don't know how many --

22 A. I don't even --

23 Q. -- there were?

24 A. -- know, yeah. It could have been 5,

DAVID GROCHOCINSKI, JANUARY 19, 2009

1 could have been 3, could have been 10. I don't  
2 think it was 50, but, you know, it -- it was  
3 probably somewhere between 5 and 10 times, I would  
4 think for sure.

5 Q. What did -- what did you talk to  
6 Mr. Spehar and Mr. Todhunter about in those early  
7 phone calls?

8 A. I don't know. We talked about  
9 Mr. Franco's deposition testimony, his citation  
10 testimony, the entry of the judgment in California,  
11 those kinds of things.

12 I think Mr. Spehar must have mentioned  
13 something about the fact that he thought that there  
14 was a -- a cause of action against Mayer Brown and  
15 Mr. Given arising out of the representation of  
16 Mr. Given and Mayer Brown of CMGT. But -- well,  
17 that's --

18 Q. What -- what did you discuss about  
19 Mr. Franco's deposition testimony in the citation  
20 proceeding?

21 A. Oh, I don't know. I don't recall now.

22 Q. Well, what did Mr. -- what did  
23 Mr. Franco say in his deposition testimony in the  
24 citation proceeding that was of any interest to