

novack>macey

Stephen Novack
snovack@novackmacey.com

June 19, 2009

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Robert D. Carroll
Edward T. Joyce & Associates, P.C.
Eleven South La Salle Street, Suite 1600
Chicago, IL 60603-1211

Re: *CMGT, Inc. v. Mayer Brown LLP, et al.*

Dear Rob:

This is in response to your letter dated June 15 and your June 18 e-mail.

Your June 15 Letter

We will not herein set forth all of our responses to your letter, and reserve the right to do so at any appropriate time. For now, we state the following.

We agree that the signed affidavits of Louis Franco, James Wong, Kimberly Quarles and Wayne Baliga support our unclean hands defense. We gave you copies of those affidavits.

Your letter seeks copies of all draft affidavits, stating that the drafts are responsive to your document request and that we admitted this by listing them on our privilege log. Respectfully, we disagree as to both. First, your document request asks for all documents that “[Defendants] contend support [their unclean hands] defense.” We have never contended that the draft affidavits support our unclean hands defense, nor could they. Second, we did not list the draft affidavits on our privilege log.

Your letter also states that, by filing the final, signed affidavits, we waived any work product privilege that applies to the drafts of those affidavits. Your position is clearly incorrect, as any such drafts continue to remain privileged as work product -- just as drafts of, for example, briefs and interrogatory answers remain work product despite the filing of final versions thereof.

You also have asked for our communications with the affiants, including any draft affidavits that we sent to them. However, you are not entitled to the same for at least two

Novack and Macey LLP

100 North Riverside Plaza • Chicago, IL 60606-1501 • T: 312.419.6900 • F: 312.419.6928

Mr. Robert D. Carroll
June 19, 2009
Page 2

reasons. First, your request is untimely inasmuch as it was not made before discovery was closed. Second, any draft affidavits submitted to the affiants did not lose their work product status. Among other things, as you successfully argued to Judge Kendall, work product submitted to non-adversaries continue as privileged work product.

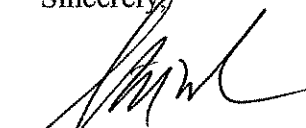
We are not willing to change the position set forth in our earlier letter to you and we reserve all of our clients' rights, arguments, remedies and defenses.

Your July 18 E-Mail

We have no objection to your request for an additional 14 days to file Plaintiff's response to Defendants' motion for summary judgment, or to your request to file a brief not to exceed 30 pages and a Rule 56.1 statement not in excess of 75 paragraphs. You are authorized to inform Judge Kendall that we have no objection as aforesaid.

However, you are not authorized to link that non-objection in any way to your alleged need for additional time to resolve what you describe as a "discovery dispute." Without limiting the generality of the foregoing, discovery has long been closed and there is no need for "additional time" with respect thereto.

Sincerely,



Stephen Novack

SN:kmz