

EXHIBIT 103

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

Robert Carroll

From: Given, Ronald B.
Sent: Saturday, November 29, 2003 7:58 AM
To: Joan C. Holthaus (E-mail)
Subject: FW: More from LA - Spehar v. CMGT & DOES 1-100
Attachments: Verified1stAmendedComplaint_11-24-2003.pdf

-----Original Message-----

From: Louman01@aol.com [mailto:Louman01@aol.com]
Sent: Friday, November 28, 2003 10:54 PM
To: Given, Ronald B.
Subject: Re: More from LA - Spehar v. CMGT & DOES 1-100

Thanks, Ron.

Also, pardon my adding more stuff for us to discuss, but the attached "VERIFIED FIRST AMENDED COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF FOR....dated 11-24-2003" was delivered by FedEx to my home while we were out this evening - I just noticed it on my front doorstep this evening, so, I PDF'd it in case a Cc was not sent to you so we could discuss what Gerry & his lawyers are up to with this amended complaint. This does not appear to be a copy filed with the Court and there was no cover letter enclosed from our friend Ken Franklin.

Best regards,

Lou

Louis J. Franco, RHU
President & CEO
CMGT, Inc.
2 S 647 White Birch Lane
Wheaton, IL 60187

voice: 630-260-9507
cell: 630-215-8193
fax: 978-389-1060

E-mail1: Louman01@aol.com
E-mail2: lfranco@cmgt.com

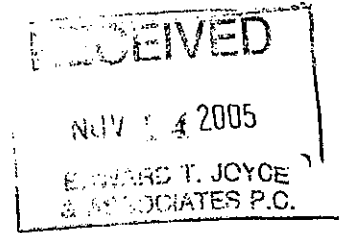
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CMGT, Inc. Management
=====

EXHIBIT 104

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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



IN RE:)
)
CMGT, Inc.) Bankruptcy No. 04B 31669
) Chapter 7
Debtor) Judge John H. Squires (Wheaton)
)

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

Please take notice that on **November 18, 2005**, I will appear before the Honorable Judge Squires or before any Judge sitting in his place and stead in **Courtroom 2000** the room usually occupied by said Judge in the DuPage County Courthouse, 505 N. County Farm Road, Wheaton, Illinois at the hour of **9:30 a. m.** and then and there present the attached **Application to Employ Special Counsel**, at which time you may appear if you see fit.

/s/ David E. Grochocinski
David E. Grochocinski

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

David E. Grochocinski, on oath, certifies that he is the Trustee of the Estate and that he mailed a copy of this Notice and Motion to the listed parties from 1900 Ravinia Place, Orland Park, IL 60462 with proper postage prepaid on November 7, 2005, before the hour of 5:00 o'clock p.m.

/s/ David E. Grochocinski
DAVID E. GROCHOCINSKI
David P. Lloyd
Arthur W. Rummler
Grochocinski, Grochocinski & Lloyd, Ltd.
1900 Ravinia Place
Orland Park, IL 60462 (708) 226-2700

PL 02658

CMGT, Inc.
Case No. 04B 31669

SERVICE LIST

Spehar Capital, LLC
c/o Steven A. Klenda
1600 Broadway
Suite 2600
Denver, CO 80202

L. Judson Todhunter
Defrees & Fiske, LLC
200 South Michigan Avenue
Suite 1100
Chicago, IL 60604

U. S. Trustee
227 West Monroe Street
Suite 3350
Chicago, IL 60606

Spehar Capital, LLC
1625 Grandview Avenue
Glendale, CA 91201

Louis Franco
25647 White Birch Lane
Wheaton, IL 60187

Ronald Given
Mayer, Brown, Rowe & Maw, LLP
190 South LaSalle Street
Suite 3132
Chicago, IL 60603

Linda Holman
Ron Holman, Ph. D.
c/o The Holman Group
21050 Vanowen Street
Canoga Park, CA 91303

R. Leonard Carroll, M. D.
P. O. Box 1350
James Town, TN 38556
Lee M. Rask

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Celia Wong
James M. Wong
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Glen Ellyn, IL 60137

Kim and Robert Quarles
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Portsmouth, NH 03801

William J. Donwen
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Richard M. Ross
c/o Louis Franco
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Jan Levine
c/o Louis Franco
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Byron Hollins
c/o Louis Franco
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Charles Troutner
c/o Louis Franco
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Wayne Baligier
c/o Louis Franco

PL 02659

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Kevin Regan
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Melvin Spaith
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Catherine Garner
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William Walker
c/o Louis Franco
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Deborah D. Benedette
c/o Louis Franco
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Craig Jackson
c/o Louis Franco
25647 White Birch Lane
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Robert Crandall

c/o Louis Franco
25647 White Birch Lane
Wheaton, IL 60187

Robert Fishman
Shaw, Gussis, Fishman, Glantz, Wolfson &
Towbin, LLC
321 North Clark Street
Suite 800
Chicago, IL 60610

Edward T. Joyce
Edward T. Joyce & Associates, P. C.
11 South LaSalle Street
Suite 1600
Chicago, IL 60603

David E. Grochocinski
David P. Lloyd
Arthur Rummel
Grochocinski, Grochocinski & Lloyd
1900 Ravinia Place
Orland Park, IL 60462
(708) 226-2700
Attorneys for Trustee

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

In re:) Case No.: 04 B 31669
CMGT, Inc.,)
Debtor.) Application to Employ Special Counsel
_____)

Comes now David E. Grochocinski, chapter 7 trustee for the estate of CMGT, Inc., by his attorneys, Grochocinski, Grochocinski & Lloyd, Ltd. and in moving this court for an order authorizing the trustee to employ special counsel states as follows:

- 1) Applicant is the appointed chapter 7 trustee for the within named debtor.
- 2) A review of some documents and other information indicates that a cause of action may exist in favor of the estate as to some professionals employed by the debtor on a prepetition basis and /or as to some members of the board of directors of said corporation or to certain officers of the debtor.
- 3) In order to fully explore the possible actions if any, the trustee desires to employ Edward T. Joyce and the firm of Edward T. Joyce & Associates, P. C.
- 4) The trustee has discussed the issues with Edward T. Joyce and believes that proposed special counsel is well able to undertake the investigation and prosecution of such actions in the event the same is warranted.
- 5) Mr. Joyce and his firm have agreed to undertake such representation of the trustee on a contingent fee basis of 30% of any settlement amount in the event a cause of action is determined to exist and is settled prior to trial and for the sum of 40% of an award in favor of the estate if the matter proceeds to trial plus expenses as set forth in the

Contingency Fee Agreement. However, in addition to the award and or settlement, payment of the fees is wholly dependent upon collection of the settlement or award by the estate so that in the event other moneys are obtained by the estate from other sources none of those other sources of funds would be liable for payment to special counsel. Mr. Joyce and his firm are limited in their payment to funds received from any cause of action that is initiated by his firm at and with the consent of the trustee.

- 6) Despite the contingent fee arrangement, the trustee has advised Edward T. Joyce and his firm that the court will require that time expended on this matter be maintained so as to comply with the Court's eventual inquiry as to reasonableness of compensation. Special Counsel understands that despite the contingency fee no fee can be paid unless an application therefore has been filed and notice given to creditors with appropriate review by the Court.
- 7) Attached hereto is the declaration of Edward T. Joyce and based on same the trustee believes that he and the firm of Edward T. Joyce & Associates, P. C. are able to act as special counsel to the trustee in this matter.
- 8) Proposed special counsel understands that no settlement is able to be finalized nor is any settlement valid until and unless an application to do so has been filed with and approved by the court.

Wherefore, David E. Grochocinski, trustee, by his attorneys, prays that this court enter an order authorizing the trustee to employ Edward T. Joyce and the firm of Edward T. Joyce & Associates, P. C. to act as special counsel to the trustee or for such other and different relief as the Court deems just and equitable.

David E. Grochocinski, trustee

By: /s/ David E. Grochocinski

One of his attorneys

PL 02662

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)
) Bankruptcy No. 04B 31669
CMGT, Inc.) Chapter 7
)
Debtor) Judge John H. Squires
)
)

DECLARATION OF EDWARD T. JOYCE

I, Edward T. Joyce, declare:

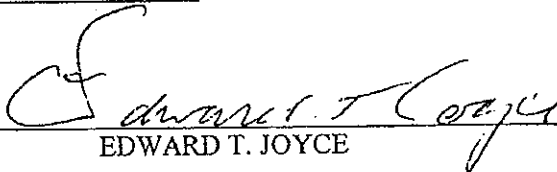
- 1) I am an attorney licensed to practice by the Supreme Court of the State of Illinois and a partner or principal with the firm of Edward T. Joyce & Associates, P.C.
- 2) I and the, shareholders, staff attorneys and employees of Edward T. Joyce & Associates, P.C., are experienced in negotiating, resolving, and litigating professional and corporate negligence or malpractice claims.
- 3) Edward T. Joyce & Associates, P.C. is willing to accept employment by the trustee, on the basis set forth in the annexed application. To the best of my knowledge, upon information and belief, I and the staff attorneys and employees have the following contacts with the debtor and its creditors:

Except for meetings with the trustee, counsel for creditor, Spehar Capital and Gary Spehar, and limited review of some documents, no contacts.
- 4) Defendant has read the application to employ specific counsel and the contingent fee agreement and agrees on behalf of himself and the firm of Edward T. Joyce & Associates, P.C. to the terms and conditions thereof.

- 5) No person in the Office of the U.S. Trustee nor the U.S. Trustee is a relation of affiant or the employees of Edward T. Joyce & Associates, P.C., as set forth in 11 USC 101 (45). Applicant does not represent or hold any interest adverse to the debtor or the estate with respect to the subject claim.

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED THIS 3rd DAY OF November, 2005


EDWARD T. JOYCE

PL 02664

CONTINGENCY FEE AGREEMENT

ENGAGEMENT

1. The estate of CMGT, Inc., (the "Client"), hereby retains Edward T. Joyce & Associates, P.C., attorneys at law (the "Law Firm"), to provide professional legal services to the Client to investigate and prosecute the claims that Client has against professionals, officers, directors, insiders, or other parties, including but not limited to, Mayer Brown Rowe & Maw, which arise out of or relate to the following: (a) legal services provided by Mayer Brown Rowe & Maw to CMGT, Inc., (b) attempts by any professionals, directors, insiders, or other parties, such as Mayer Brown Rowe & Maw, to secure financing for CMGT, Inc., and/or (c) the action captioned *Spehar Capital, LLC v. CMGT Inc.*, No. 03 MR 1209 (the "Claims").

PROSECUTION OF CLIENT'S CLAIMS

2. Law Firm, upon receipt of an executed copy of this Agreement, shall diligently investigate and prosecute the Claims. Law Firm's obligation under this Agreement shall terminate upon the final settlement of the Claims or the entry of a final award. Law Firm is not obligated to initiate or defend any post-litigation motions or appeals unless Law Firm specifically agrees in writing to do so.

3. Law Firm is only obligated to defend Client against counterclaims, third-party claims or independent lawsuits filed against Client which are reasonably related to the Claims.

4. Client acknowledges that Law Firm has not warranted and cannot predict results.

CLIENT'S DUTIES AND REPRESENTATIONS

5. Client shall cooperate with and assist Law Firm in the investigation and prosecution of the Claims including but not limited to: consulting with Law Firm when requested; answering written interrogatories; producing or procuring documents; giving

depositions; attending hearings; and providing all other assistance reasonably requested. Law Firm understands and acknowledges that Client is the Chapter 7 Trustee of CMGT, Inc. and may be limited in his knowledge of information and/or documents relating to the Claims. Client shall make a diligent effort to obtain any and all documents reasonably requested by Law Firm from third parties within Client's control, including but not limited to Mayer Brown Rowe and Maw. In the event that the third party asserts a privilege, Client shall demand that the third party provide a detailed privilege log listing the type of document withheld, the date of the document, the parties to the document (e.g., sender and recipient), and the basis for the privilege. At Law Firm's request, Client will waive attorney/client privilege with respect to Mayer Brown Rowe and Maw.

6. Client has delivered or will promptly make available to Law Firm all relevant documents. In addition, Client represents and warrants to Law Firm that the facts that Client has communicated or may hereafter communicate to Law Firm are true, to the best of Client's knowledge, information and belief.

7. Client represents and warrants to Law Firm that Client has not assigned or transferred all or part of Claims to any person and that Client has not signed any other contingency fee agreement with any other lawyer or law firm with respect to the Claims. If Client, in the future, assigns, transfers, or grants a security interest in or in any way encumbers all or any part of the Claims, Client shall notify Law Firm prior to such assignment, transfer, grant or encumbrance, and such assignment, transfer, grant or encumbrance shall be junior in security interest to Law Firm's lien on any judgment or award resulting from prosecution of the Claims (as described in Item 8), and shall in no way affect the rights or obligations of Law Firm and/or Client as described in this Contingency Fee Agreement, nor shall it affect any terms of the

Contingency Fee Agreement.

LEGAL FEE AND SCOPE OF REPRESENTATION

8. In consideration of this Agreement, Law Firm shall receive a fee equal to thirty percent (30%) of any and all money or other benefits recovered on the Claims (a "Recovery") pursuant to a settlement agreement entered into before trial commences, or forty percent (40%) of any Recovery once a trial on the merits commences. To secure Law Firm's fee as provided hereinabove (the "Fee"), Client hereby grants to Law Firm a lien on any judgment, award or Recovery resulting from prosecution of the Claims.

9. In the event of a Recovery, all funds therefrom shall be disbursed to Client. Law Firm shall be entitled to receive its Fee from the Recovery, and, in addition, reimbursement of any of the unreimbursed costs and expenses advanced by Law Firm (the "Expenses"). Both the Fee and the Expenses shall be subject to the approval by the Bankruptcy Court pursuant to applicable law. In the event of a proposed settlement of the Claims, the Motion filed by Client to authorize such settlement shall include a request for the Bankruptcy Court to authorize payment of the Fee and reimbursement of the Expenses at the time of the consummation of the settlement.

10. If no Recovery is obtained, Client is not obligated to pay Law Firm any fee for its services, except as otherwise provided in this Agreement.

COSTS AND EXPENSES

11. The payment of costs and expenses shall be in addition to any fee paid to Law Firm. The payment of such costs and expenses shall be contingent upon a Recovery being obtained and shall be payable to the Law Firm by the Estate only after review and approval of such costs and expenses by the Bankruptcy Court. The Law Firm's fee shall be calculated on the

basis of the gross Recovery -- *i.e.*, the total amount of the Recovery before any costs and expenses are subtracted.

12. Costs and expenses include, but are not limited to, the following:
 - a. Court costs (actual cost);
 - b. Witness fees (actual cost);
 - c. Court reporter fees (actual cost);
 - d. Other outside services (*e.g.*, investigators, outside messenger services, process servers, equipment rental, temporary personnel, Federal Express or equivalent, printing, bulk copying, litigation support, photography, etc.) (actual cost);
 - e. Travel expenses (actual cost including meals and lodging while traveling on client business);
 - f. Internal copy expenses, including word processing (\$.15 per page);
 - g. Binding charges (\$3.00 per 50 pages);
 - h. Facsimile charges (\$1.00 per page);
 - i. Long distance telephone charges (approximate actual cost);
 - j. Postage (only excess of \$1.00 per mailing);
 - k. Internal messengers (\$3.00 per delivery);
 - l. Lexis/Westlaw charges (approximate actual cost);
 - m. Secretarial overtime (\$30.00 per hour);
 - n. Docket maintenance (\$3.00 per month)

13. The Law Firm and Client hereby acknowledge that the Client has entered into an agreement with Spehar Capital LLC ("Spehar"), which is attached hereto as Exhibit A and incorporated herein by reference, through which Spehar has agreed to advance up to \$18,500.00 for the funding of the costs and expenses of the administration of the estate not relating to the

Claims ("Estate Costs").

14. The Law Firm and Client further acknowledge that the Law Firm and Spehar have entered into an Expense Sharing Agreement, which is attached hereto as Exhibit B and incorporated herein by reference. Pursuant to the Expense Sharing Agreement, Spehar will either reimburse Law Firm for the first \$5,000 of costs paid by Law Firm respecting the prosecution of the Claims or pay such expenses (limited to \$5,000) directly to the appropriate third party if submitted to Spehar for payment ("Prosecution Costs")

15. The Law Firm and Client acknowledge that Spehar is entitled to be reimbursed up to \$18,500.00 for its advancement of funds in connection with Estate Costs, but solely from the proceeds of any Recovery resulting from the Claims prior to the Law Firm receiving its Fee from the proceeds of any Recovery. The \$5,000.00 provided for in Paragraph 14 hereof shall be reimbursed to Spehar by Law Firm.

16. After Spehar has been reimbursed up to, but not more than, \$23,500.00, the Law Firm shall be paid its fee out of the proceeds of any Recovery resulting from the Claims.

17. After the Law Firm's fee has been paid, any unreimbursed costs and/or expenses that have been advanced by the Law Firm and/or Spehar shall be paid to the Law Firm and/or Spehar on a pro rata basis out of the proceeds of any recovery resulting from the Claims.

18. If it becomes necessary for the prosecution of the Claims for the Client to retain an expert witness, the Client, the Law Firm and Spehar must all mutually agree on the selection of the expert witness. However, the Client, the Law Firm, and Spehar cannot refuse to permit the Client to retain an expert witness without reasonable cause for such refusal and without a detailed statement of the reason for the refusal. If, after a good faith effort, the Law Firm, the Client and Spehar cannot agree on an expert witness to retain, the Client shall promptly file a

Motion with the Bankruptcy Court seeking authority to retain the expert selected by Law Firm, subject to applicable notice and an opportunity for hearing.

SETTLEMENT

19. No settlement or compromise of the Claims shall be made without Client's prior, written consent. Any settlement of the Claims is expressly subject to authorization from the Bankruptcy Court after appropriate notice and an opportunity for hearing. Client represents and warrants that he shall use his best efforts to obtain such authorization from the Bankruptcy Court as to any proposed settlement to which Client has so consented.

OTHER LAWYERS

20. If it becomes necessary to hire lawyers outside of Cook County, Illinois, to provide ministerial assistance to Law Firm such as the subpoenaing of witnesses or documents, or to act as "local counsel" in any related proceedings commenced outside of Cook County, Illinois, then the fees, costs and expenses of such lawyers shall be regarded as costs and expenses which shall be paid or reimbursed as provided above. If Client deems it necessary or appropriate, such retention shall be subject to authorization from the Bankruptcy Court.

TERMINATION BY CLIENT

21. Client retains the right to terminate this Agreement at any time, without cause. Client also retains the right to direct Law Firm to terminate any lawsuit being prosecuted on behalf of Client. Client acknowledges that termination of the lawsuit may require permission of the Bankruptcy Court and the payment by Client of costs to the opposing party and that any counterclaims, third party claims or independent lawsuits filed by an opposing party may not be terminated. Absent gross negligence or intentional misconduct, neither Spehar or Law Firm shall be liable for any such costs. If a final determination is made that Spehar, but not Law Firm

was grossly negligent or engaged in intentional misconduct, then only Spehar shall be liable for such costs. If a final determination is made that Law Firm, but not Spehar, was grossly negligent or engaged in intentional misconduct, then only Law Firm shall be liable for such costs.

22. If Client terminates this Agreement without terminating any lawsuit then being prosecuted on behalf of Client, Law Firm will seek to withdraw from the lawsuit. If the Bankruptcy Court refuses to permit Law Firm to withdraw from the lawsuit, then this Agreement shall remain in effect, notwithstanding the provisions of the previous paragraph.

23. If Client terminates this Agreement or directs the Law Firm to terminate any lawsuit being prosecuted by Law Firm on behalf of Client before a recovery is received, for any reason, Client shall pay Law Firm a fee based upon the standard hourly rates charged by Law Firm for non-contingent services as of the date of termination, plus any unpaid or unreimbursed costs and expenses. If however, Client and Law Firm mutually agree that a lawsuit or claim should not be pursued, Client may direct Law Firm to seek to dismiss that lawsuit or claim and if dismissed, Law Firm agrees that it will not seek legal fees or costs for work done in pursuing that lawsuit or claim.

TERMINATION BY LAW FIRM

24. If Law Firm shall determine, after making a reasonable investigation, that the Claims are not meritorious, or that the Claims are subject to a meritorious defense, or that the Claims are substantially offset by a meritorious counterclaim, intervening claim or third party claim, or that the value of the Claims is insufficient to justify the effort required to prosecute it, or that any judgment that could be entered on the Claims is not reasonably collectible, then Law Firm shall have the right to terminate this Agreement upon written notice to Client. For purposes of this paragraph, a "meritorious defense" shall be any defense that has a valid legal and factual

basis upon which a defendant is more likely than not to prevail.

25. If Law Firm terminates this Agreement pursuant to the previous paragraph, Client shall not owe Law Firm any fee or costs for its services.

26. Law Firm also has the right to terminate this Agreement for cause if Client fails to perform any of the duties of Client described herein in paragraph 5, or if any of Client's representations and warranties described in paragraphs 6 and 7 should prove to be untrue. Law Firm shall advise Client of its intent to terminate this Agreement and the reasons therefore. Client shall have a reasonable amount of time to cure any problems or perform its duties pursuant to this Agreement.

27. If Client fails to cure any defects pertaining to Client's performance under this Agreement and Law Firm terminates this Agreement pursuant to the provisions of this Agreement, then Client shall pay Law Firm a fee based upon the standard hourly rates charged by Law Firm for non-contingent services as of the date of termination, plus any unpaid or unreimbursed costs and expenses.

RESOLUTION OF DISPUTES

28. All claims relating in any way to the interpretation or application of this Agreement or arising out of this Agreement shall be resolved by the Bankruptcy Court.

NO OTHER AGREEMENTS

29. This Agreement is the only agreement between Client and Law Firm relating to the Claims. This Agreement supersedes any prior understanding or agreement between Client and Law Firm with respect to the Claims. This Agreement may be modified or amended only by a written document signed by both Client and Law Firm.

RECEIPT

30. Client acknowledges receipt of a fully executed copy of this Agreement.

Dated:

Edward T. Joyce & Associates, P.C.

By: _____

Accepted and Agreed to by:

**David Grochocinski, interim trustee
Estate of CMGT, Inc.**

Dated: _____ . 2005

PL 02673

EXHIBIT A

PL 02674

600 Grant St., Suite 300
Denver, CO 80203

STEVEN A. KLENDA, LLC

(303) 514-3179
FAX: (303) 851-1777

June 14, 2005

VIA FACSIMILE AND EMAIL

David Grochocinski, Esq.
Grochocinski, Grochocinski & Lloyd, Ltd.
1900 Ravinia Place
Orland Park, IL 60462

Re: Agreement re: Post-Petition Financing Application.

Dear David:

This letter formalizes the agreements that Spehar Capital, LLC ("Spehar") and you, as the chapter 7 Trustee for CMGT, Inc. in Case No. 04 B 31669, which is pending before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, have reached with respect to your Application of the Trustee to Enter into Post-Petition Secured Financing and Other Relief ("Post-Petition Financing Application"). We have agreed that:

1. The Post-Petition Financing Application will be submitted to the Court simultaneously with your Application to employ Spellmire & Sommer as special counsel.
2. The proposed order for the Post-Petition Financing Application ("Proposed Order") will not be submitted until Spehar and you have both formally approved its form, as indicated by my signature as counsel for Spehar, and your signature as chapter 7 Trustee, on the proposed order. We have also agreed that prudence dictates that some terms of our agreement not be specified in the proposed order, but will, nevertheless be binding. Specifically:

a. In addition to the terms that the Proposed Order specifies, Spehar agrees that it is obligated to pay you \$1,500 for all of the Estate's right, title and interest in and to or derived from the Estate's software and intangibles, including, but not limited to, CMGT's proprietary "Absence Expert" and "Poster" software, within twenty days after the completion of your reasonable efforts to obtain this software. For the purpose of this agreement, "reasonable efforts" shall mean your sending a demand to turnover "certain software and intangibles of the Debtor, including but not limited to a working copy and computer code of the version of CMGT's proprietary "Absence Expert" and "Poster" software that CMGT last used to service its customers as of August 1, 2003, to Lou Franco, Jim Wong and Rob Crandall because it is property of the estate, and that your demand shall include appropriate excerpts and references to CMGT documents/policies that show that these persons should have a copy of the software. Spehar will provide the appropriate

SK
6/24/05
6/24/05

David Grochosinski, Esq.
June 14, 2005
Page 2 of 2

references to CMGT documents/policies to be included in the letter, which shall also demand that the software be returned before the 20 day "reasonable efforts" deadline expires.

b. You will take all necessary or appropriate actions to void the UCC-1 financing statements or other liens that CMGT's shareholders or persons otherwise affiliated filed with the IL Secretary of State Illinois on or about 12/18/2003. *attempt to void 6/24/05*

c. You will obtain all documents that Mayer-Brown has set aside for you per its November 29, 2004 letter to you and provide Spehar with a copy of the CD-ROM that you have obtained from Mayer-Brown within 10 business days of your receipt of the initial \$5,000 advance from Spehar.

Our respective signatures below indicate our agreement to the above.

STEVEN A. KLINDA, LLC

Steven A. Klinda
14 June 2005

Steven A. Klinda, Esq.
1600 Broadway, Suite 2600
Denver, CO 80202
Phone: (303) 832-1800
Fax: (303) 832-1800

ATTORNEY FOR
SPRHR CAPITAL, LLC

DAVID E. GROCHOCINSKI

David E. Grochosinski
6/24/05

David E. Grochosinski
1900 Ravinia Place
Orland Park, IL 60462
Phone: (708) 226-2700
Fax: (708) 226-9030

CHAPTER 7 TRUSTEE

EXHIBIT B

EXPENSE SHARING AGREEMENT

Whereas, the estate of CMGT, Inc., (the "Client"), has retained Edward T. Joyce & Associates, P.C., attorneys at law (the "Law Firm"), to provide professional legal services to the Client to investigate and prosecute the claims that Client has against professionals, officers, directors, insiders, or other parties, including but not limited to, Mayer Brown Rowe & Maw, which arise out of or relate to the following: (a) legal services provided by Mayer Brown Rowe & Maw to CMGT, Inc., (b) attempts by any professionals, directors, insiders, or other parties, such as Mayer Brown Rowe & Maw, to secure financing for CMGT, Inc., and/or (c) the action captioned *Spehar Capital, LLC v. CMGT Inc.*, No. 03 MR 1209, pending in the 18th Judicial Circuit, DuPage County, Illinois (the "Claims");

Whereas, Spehar Capital LLC ("Spehar") and the Client entered into an agreement on or about June 24, 2005 (the "Spehar Agreement") regarding the submission of a "Post Petition Financing Application" by the Client to the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division;

Whereas, pursuant to the Post Petition Financing Application, which will be heard by the Court on or about September 2, 2005, Spehar Capital, LLC agreed, *inter alia*, to, (a) advance to the Client the sum of \$5,000 for the payment of certain costs and expenses of the administration of the estate ("Estate Costs") upon the Client's submission of the Post Petition Financing Application, and (b) advance additional amounts for Estate Costs as set forth in the Spehar Agreement;

Whereas, the "Post Petition Financing Application" further provides that any and all advances by Spehar to or on behalf of the Client shall be collateralized by the Client's recovery

resulting from the prosecution of the Claims and that Spehar has a valid and perfected lien on the proceeds of any such recovery; and,

Whereas, Spehar and the Law Firm desire to enter into an agreement pursuant to which they will share the expenses of the prosecution of the Claims (this "Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, including the Law Firm's agreement to be retained to prosecute the Claims, the undersigned parties agree as follows:

EXPENSE SHARING

1. Spehar shall advance \$5,000.00 to the Client upon the filing by the Client of the Post Petition Financing Application, as set forth in the Spehar Agreement, which is attached hereto as Exhibit A and incorporated herein by reference as though fully set forth herein.
2. Spehar shall advance to the Client additional amounts of up to, but no more than \$18,500, for Estate Costs as set forth in the Spehar Agreement.
3. In addition to Spehar's advance of up to \$18,500 to the Client for Estate Costs, Spehar shall pay the first \$5,000 in costs related to the prosecution of the Claims. After Spehar has advanced at least, but no more than, \$5,000.00 on behalf of the Client in connection with the prosecution of the Claims ("Prosecution Costs"), the Law Firm and Spehar shall thereafter share the costs and expenses of the prosecution of the Claims equally.
4. Spehar shall be reimbursed for his advancement of money to or on behalf of the Client in connection with Estate Costs and the Prosecution Costs up to \$23,500.00 from the proceeds of any recovery that results from the prosecution of the Claims prior to the disbursement of the proceeds of any recovery to the Law Firm for payment of the Law Firm's fee.

(A0100251.DOC 2)

Page 2 of 4

011

8780-143-011

United States

0-0-000 01 11 200

PL 02679

GOVERNING LAW

9. This Agreement shall be governed by Illinois law.

NO OTHER AGREEMENTS

10. This Agreement is the only agreement between Spehar and Law Firm relating to the Claims. This Agreement supersedes any prior understanding or agreement between Spehar and Law Firm with respect to the Claims. This Agreement may be modified or amended only by a written document signed by both Spehar and Law Firm.

RECEIPT

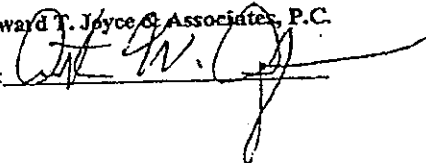
11. Spehar acknowledges receipt of a fully executed copy of this Agreement.

Dated:

8/31/05

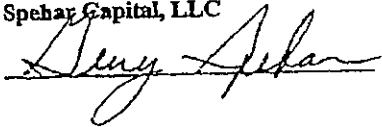
Edward T. Joyce & Associates, P.C.

By:



Accepted and Agreed to by:

Gerry Spehar
Spehar Capital, LLC



Dated:

_____, 2005

1 David E. Grochocinski
2 David P. Lloyd
3 Arthur Rummier
4 Grochocinski, Grochocinski & Lloyd
5 1900 Ravinia Place
6 Orland Park, IL 60462
7 (708) 226-2700
8 Attorneys for Trustee

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

In re:) Case No.: 04 B 31669
CMGT, Inc.,)
Debtor.) Order Authorizing Employment of Special
Counsel

AT WHEATON, IL BEFORE THE HONORABLE JOHN SQUIRES, US BANKRUPTCY JUDGE
THIS 18TH DAY OF NOVEMBER 2005.

This matter coming before the Court on the application of the trustee to employ special
counsel, due notice having been given and the Court being otherwise advised in the premises:
IT IS HEREBY ORDERED:

- 1) The application of the trustee to employ Edward T. Joyce and the firm of Edward T. Joyce & Associates, P. C. as special counsel to investigate and if appropriate prosecute such actions against professionals, officers and directors of the debtor for malpractice or other like causes of action on behalf of the estate and trustee.
- 2) Compensation shall be paid on a contingent fee basis with the amount of 30% of any amount paid to the estate on account of said cause of action or alleged cause of action prior to trial and the sum of 40% if a matter proceeds to trial and a verdict is found in favor of the estate, plus court costs as set forth in the Contingency Fee Agreement. No fee shall be paid nor costs reimbursed to special counsel unless funds from the cause of action are awarded and paid to the estate or the trustee.

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3) Special counsel shall maintain time records to justify any compensation request and no amount shall be paid to special counsel unless and until an application therefore has been filed with and approved by this court.

4) No settlement of any action nor other resolution shall be effective until an order approving same has been entered by this court in accordance with Rule.

Enter:

United States Bankruptcy Judge

EXHIBIT 105

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)	
)	
CMGT, INC.,)	
)	
Debtor.)	Bankruptcy No.04-31669
)	Chapter 7
)	
DAVID E. GROCHOCINSKI,)	Honorable John H. Squires
)	(Wheaton)
Trustee,)	
)	
vs.)	
)	Adversary No.07-00838
SPEHAR CAPITAL, LLC,)	
)	
Defendant.)	

The deposition of DAVID E. GROCHOCINSKI, called as a witness herein, for examination taken pursuant to the provisions of the Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before LYNN MANGAN, a Notary Public within and for the County of Lake, State of Indiana, and a Certified Shorthand Reporter of the State of Illinois at the Law offices of GROCHOCINSKI, GROCHOCINSKI & LLOYD on the 30th day of October, A.D., 2008.

LYNN MANGAN, Certified Shorthand Reporter
License No. 084-001449

1 understanding. And at that point in time, I thought to
2 myself that I should perhaps look further at the
3 situation regarding Spehar's lien or alleged lien,
4 because he apparently believed that he was -- that the
5 citation gave him a lien on everything. And that was not
6 my -- that was not my understanding; that it didn't
7 foreclose my rights or my obligations as trustee to
8 determine nature, extent, and priority of liens.

9 So I started to look. Because it appeared to
10 me that it was brought to my attention that if I didn't
11 do it at that time that later, somebody may say that I
12 sat on my rights.

13 And so that's when I started to search around
14 and looked at the cases -- at the underlying citation
15 case. But I can't tell you the exact date or the exact
16 order. But it happened all in the process of the
17 objections to the settlements.

18 Q. If I understood your answer correctly, Spehar's
19 team was of the opinion that the citation gave them a
20 lien on the recovery of the malpractice action. Is that
21 right?

22 A. No. I think that they said that the virtue of
23 -- by virtue of the Court order, they had a lien, brand
24 new, on all of the proceeds; because they had a lien

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pre-bankruptcy, none of which was determined.
2 In other words, there was no objection from me,
3 as I said before, about a secured lien to the extent that
4 he -- that Mr. Spehar or Spehar Capital advanced monies
5 to prosecute the malpractice action against Mayer Brown.

6 Nobody is objecting to that. He has a super
7 priority lien to that extent.

8 Q. To the extent of his post-petition advances?

9 A. To the malpractice, for costs and expenses with
10 regard to that, that's correct. No question about that.

11 But his -- his responses and my discussions
12 seemed to indicate -- at least indicated to me that his
13 attorneys somehow believed that he not only had a secured
14 lien on all of the proceeds, but that for some reason or
15 another, it had been determined by virtue of the
16 Financing Order, none of which I consented to.

17 The Financing Order didn't convert what would
18 ordinarily have been maybe an unsecured claim, unsecured
19 judgment claim into something different, a secured claim.

20 That had not been determined. Notice hadn't
21 gone out to that extent. Local rules hadn't been
22 complied with that, even if I wanted to do it. And the
23 order wasn't specific enough to even be able to say that.

24 So, at that point in time, I believed it was

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1 incumbent upon me to start looking at the nature, extent,
2 and priority of Mr. Spehar's alleged lien, and that led
3 me down the road that I have gotten to.

4 Q. What did you believe Mr. Spehar's Citation
5 pre-petition, granted to him relative to the malpractice
6 action proceeds?

7 A. Not determined.

8 Q. Okay.

9 A. He had a Citation lien on whatever a Citation
10 lien would give him. So to the extent that the Citation
11 lien gave him a lien on something, that was in accordance
12 with State law. That was what he would have a lien on.

13 Q. Well, what's your understanding then of the
14 significance of the Sharing Agreement that splits up the
15 proceeds of the malpractice action?

16 A. Well, my thought always was that Spehar wanted
17 some assurance that in the event that he was secured,
18 that there would be some kind of an agreement based on a
19 sharing with the estate.

20 But there was never a determination made that
21 that's what he would get. It was more of a -- he needed
22 an assurance before he was going to put money out on the
23 street to finance the litigation against Mayer Brown that
24 in the event he was secured, he would be -- this is what

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1 he was willing to do for the estate in order for us to
2 continue to pursue it.

3 But clearly, he must have thought that there
4 might have been some question. Because if he was the
5 owner of the cause of action, what would he need me for?
6 There was obviously some doubt there as to whether he had
7 an interest in that litigation or not.

8 Otherwise what was the point of having a
9 trustee bring the case in the first place? He must have
10 thought -- I assume he must have thought that the estate
11 was the rightful owner. And if that's the case, then
12 there's no necessity -- or there would be no reason for
13 him to ask me to do anything.

14 Q. But the allocation of the proceeds from the
15 malpractice action is different than who owns the cause
16 of action, is it not?

17 A. Only to the extent that he advanced the monies,
18 and then there was a determination that he was secured.

19 If it's determined that he's not secured, then
20 there's no reason for that. But he wanted an assurance
21 that if there was going to be a security -- if he was
22 going to be a secured creditor, that it would be divided
23 up in a certain fashion. And that made sense to me as
24 the trustee for the estate, because it benefited

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1 unsecured creditors provided he was going to be deemed to
2 be a secured creditor.

3 Q. Why then doesn't the application or the
4 Financing Order or the Sharing Agreement reference two
5 different scenarios based on whether Spehar is secured or
6 unsecured?

7 A. I don't know the answer to that. That's the
8 way it was drafted. Nobody said anything. That was my
9 view of how it was drafted.

10 Q. Okay. In your opinion, isn't that a material
11 term of the agreement?

12 A. No. Why would it be? The only way that he
13 would have to say -- he would have to specifically say,
14 "I need to be deemed to be secured", waive any objections
15 from the trustee; and in order to do that, you have to
16 comply with local rules.

17 And local rules would specifically say that I
18 would have to highlight that, stick it in certain kind of
19 language right up in front. It would have to have
20 complied with local rules to say that, none of which was
21 done.

22 Q. Okay. Which --

23 A. And then --

24 Q. Go ahead.

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A. And they had bankruptcy counsel.

2 Q. Right.

3 A. They knew what the financing orders are. You
4 know, Mr. Todhunter is an experienced bankruptcy lawyer,
5 local guy. And Klenda has some bankruptcy knowledge.

6 So, that would have assumed that they would
7 have known the same thing that I would have known.

8 Q. What are the local rules that you referred to
9 in that answer?

10 A. I don't remember what the local number is
11 offhand.

12 Q. Okay.

13 A. If you want those later, I'm sure my counsel
14 can give it to you.

15 Q. Okay. So, if I understand your position, it
16 was that Spehar was going to advance money and then would
17 have to wait until some later date to determine the
18 extent of his recovery, despite what the Sharing
19 Agreement said?

20 A. Well, he was always -- his judgment was not
21 able to be vacated. I've already made that
22 determination.

23 Q. Right.

24 A. So he had a claim for, fifteen, sixteen,

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1 seventeen million, whatever it is against the estate. He
2 was clearly going to be the single largest creditor in
3 this estate.

4 So whether he was going to be treated as
5 secured or not, I'm not sure that it would have, you
6 know, would have mattered much to him in terms of an
7 actual distribution, other than the fact that if he was
8 unsecured, he would have to share with other people.

9 But since he's the single largest creditor, and
10 it was being done pro rata, he would have ended up with a
11 rather sizable distribution from the estate in any event.
12 So I'm not sure, you know, for some reason or another
13 that he needed that assurance. So --

14 Q. All right. I don't want to be argumentative
15 with this question, but I want to understand your
16 understanding of it.

17 A. Okay, go ahead.

18 Q. The difference, though, is that if he's
19 unsecured, he's in a pool of other creditors including
20 Mr. Franco?

21 A. Yes.

22 Q. And he has to share pro rata in that pool.

23 A. Okay.

24 Q. And if he's secured, or if he has assurances

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1 through the Sharing Agreement, he has a greater share in
2 the recovery than he would have as a participant in that
3 pool with Mr. Franco and others?

4 A. Nobody has done the calculations as to what the
5 difference might be. I haven't done it. And I'm not
6 sure that it -- it's such a huge claim as opposed to
7 everybody else that's in the pot, that I would think that
8 he would end up with ninety-plus percent of the recovery
9 anyway.

10 Q. But doesn't Mr. Franco have a fourteen million
11 dollar claim?

12 A. We just haven't objected to it because it's not
13 necessary at this time.

14 Q. But as it stands now, the register of claims is
15 in excess of fourteen million outside of Mr. Spehar's
16 claim?

17 A. Mr. Spehar knew that we carved out in the
18 agreement with respect to the investors that Mr. Franco's
19 claim would still be able to be contested.

20 Q. Okay. But it would be contested at
21 Mr. Spehar's expense, not at the estate's expense?

22 A. Why would that be?

23 Q. Because of the settlement that you made with
24 the investor claims?

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1 are they not different?
2 **A. Slight difference. I'd have to look at the**
3 **Code to make a determination, but 551 talks about**
4 **slightly different situations. Liens that are void are**
5 **preserved for the estate. And the liens that are void,**
6 **which is what I believe the Statute -- what the order**
7 **says -- I don't remember what the order says exactly, the**
8 **language, but I think when I looked at the language in**
9 **the order and the language of 551, I believed honestly**
10 **that my preservation of those liens was not prevented,**
11 **was not obviated by the entry of the order.**

12 **And so since it wasn't obviated, it was in the**
13 **best interest of the estate at that time to retain them,**
14 **not necessarily that there would be an effect on**
15 **Mr. Spehar.**

16 **There was no effect on Mr. Spehar until I would**
17 **stand up and say, "Mr. Spehar, I found a security**
18 **interest that I'm going to enforce." Now I understand**
19 **why he would be upset.**

20 **But in lieu of that, I'm not even sure that**
21 **anything mattered.**

22 **Q. But by preserving them for the estate --**

23 **A. To the extent that they existed.**

24 **Q. Right. You have left open the possibility that**

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they may, in fact, be a lien superior to Spehar's lien?

2 **A. Again, always hypothetically the situation.**

3 **Q. Right.**

4 **A. Always the possibility.**

5 **Q. Okay.**

6 **A. But again, that also does not mean that there**
7 **weren't other ways to rectify the situation by virtue of**
8 **subordination of those liens, because of bad acts. There**
9 **are all kind of other things that could be done along the**
10 **way.**

11 **And you know, it just wasn't -- it wasn't the**
12 **end of the road.**

13 **Q. And --**

14 **A. And nothing prevented Mr. Spehar from doing the**
15 **same thing if that's what he chose to do and if I was**
16 **recalcitrant about doing it.**

17 **Q. Right. Your understanding of the 9-2-05**
18 **financing agreement is that you complied by treating the**
19 **investor claims to what you did?**

20 **A. That's correct.**

21 **Q. Okay. You don't think that the agreement**
22 **required you to take the affirmative act of closing the**
23 **door on whether those liens could ever be purported to be**
24 **superior to Spehar's?**

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1 **A. No.**

2 **Q. Okay. Do you want to stop?**

3 (Whereupon, a lunch break was
4 taken after which the deposition
5 resumed, to wit:)

6 EXAMINATION

7 BY MR. O'BRIEN: (Continued)

8 **Q. Mark this one Exhibit 9.**

9 (Exhibit 9 is marked.)

10 BY MR. O'BRIEN:

11 **Q. David, I'm going to go back to the negotiations**
12 **over the Sharing Agreement, going back to January**
13 **of 2005. So I've handed you what has been marked as**
14 **Exhibit Number 8 -- or, I'm sorry. Number 9. Can you**
15 **identify that document?**

16 **A. Apparently it is a letter dated January 5th,**
17 **2005, to Judson Todhunter.**

18 **Q. I'm sorry. Let's go off the record.**

19 (Whereupon, an off the record
20 discussion was had, after which
21 the following proceedings were
22 had, to wit:)

23 BY MR. O'BRIEN:

24 **Q. Back on the record now. Looking at Exhibit 9,**

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1 I want to direct your attention to the bottom paragraph
2 of Page 1 which reads: "I understand your client's
3 desire to proceed to collect on an alleged malpractice
4 claim, but the estate needs to have an assured benefit
5 and greater sharing of any recovery over and above the
6 modest trustee's fee of three percent."

7 What steps did you take to ensure that the
8 estate had an "assured benefit" and their recovery?

9 **A. Well, provided that Spehar was considered to be**
10 **secured, which we had not determined then, then the**
11 **Sharing Agreement would have kicked into effect, and**
12 **Spehar would have been obligated to at least share**
13 **something with the estate if it was -- if there was a**
14 **recovery and he was determined to be secured.**

15 **Q. Now, the recovery to the estate is something**
16 **separate and apart from your trustee's fee, correct?**

17 **A. Well, it is all part of the same. I don't**
18 **understand -- I'm not sure that -- no, I don't --**

19 **Q. I'm having trouble with understanding this**
20 **sentence that the recovery to the estate is not capped at**
21 **three percent.**

22 **A. No, it's not.**

23 **Q. Okay. The modest trustee's fee of three**
24 **percent. That's the statutory percentage we talked about**

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1 earlier today. Is that correct?
2 **A. Yes. I'm not even sure that that was the case**
3 **at that point in time. I'd have to look, but yeah.**
4 **Okay. Assuming that -- because we were talking about**
5 **millions of dollars here.**
6 **Q. Right. Right. I understand that. But, was it**
7 **your understanding back in the beginning of the**
8 **discussions that the sharing was going to result in the**
9 **estate getting only three percent of the recovery of the**
10 **malpractice proceeds?**
11 **A. No, but you have to understand --**
12 **Q. Okay.**
13 **A. -- that in the event he was determined to be**
14 **secured, then there would be no reason for the estate to**
15 **proceed if the only thing we were going to get was**
16 **trustee's fees. That made no sense to me.**
17 **Why would I -- I'm not going to do this just**
18 **for the benefit of Mr. Spehar. There has to be something**
19 **else for the estate. And so, my desire was that in the**
20 **event he was deemed to be secured, that we would have**
21 **some kind of a sharing of whatever the dollars were so**
22 **that unsecured creditors would be able to share.**
23 **Q. Okay.**
24 (Exhibit 10 marked).

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BY MR. O'BRIEN:
2 **Q. I'm handing you what's been marked as Exhibit**
3 **Number 10. Do you recognize that document?**
4 **A. Well, it looks like an e-mail from Jerry Spehar**
5 **to me with a carbon copy to Jud Todhunter and Steve**
6 **Klenda dated January 11, 2005.**
7 **Q. And on the third line it uses the term**
8 **"carveout".**
9 **A. Yes.**
10 **Q. Do you see that?**
11 **A. Yes.**
12 **Q. Is that a term that you used frequently**
13 **throughout the negotiations?**
14 **A. Carveout is the same as sharing. It is just a**
15 **carveout for the estate. It just means that there's a**
16 **certain amount of money that would be paid to the estate**
17 **in the event that he was deemed to be secured.**
18 **So, whatever that was, then that would have**
19 **been fine.**
20 **Q. Okay. And if you look at the next document**
21 **called Sample Payments Under Proposed Carveout Agreement,**
22 **this is not the same sharing percentage as you ultimately**
23 **agreed to in the September 2, '05 order, is it?**
24 **A. I don't know. I'd have to see that one and**

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1 **compare it. I don't know.**
2 **Q. Okay.**
3 (Exhibit 11 marked).
4 BY MR. O'BRIEN:
5 **Q. Handing you what's been marked as Exhibit**
6 **Number 11, do you recognize that document?**
7 **A. Actually, I don't offhand. I'd have to think**
8 **about it. I don't -- I'm not sure I remember seeing**
9 **this.**
10 **Q. Okay. Would it be safe to conclude that you**
11 **did not draft it?**
12 **A. I've never seen anything like this.**
13 **Q. Okay.**
14 **A. Not that I drafted.**
15 **Q. Okay. Could I ask you to turn to Page 2 for a**
16 **moment?**
17 **A. Sure.**
18 **Q. You will see some hand-written marks and the**
19 **words "no" in two spots?**
20 **A. Uh-huh.**
21 **Q. Do you recognize that handwriting?**
22 **A. Actually, I don't.**
23 **Q. Okay.**
24 **A. No. I'm not sure. If you are asking me if**

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1 **that's mine, I wouldn't -- I don't know offhand.**
2 **Q. Okay.**
3 **A. It could be, but I don't recall this, so I**
4 **don't know.**
5 **Q. Okay.**
6 **A. It is conceivable, Mr. O'Brien, but I just**
7 **don't recall it right now. I'd have to look through my**
8 **documents or see if I did something with this.**
9 **Q. You see the Bates stamping down at the bottom**
10 **of pages 1 and 2?**
11 **A. Uh-huh.**
12 **Q. Does that indicate to you that this was a**
13 **document that your office produced in the course of this**
14 **lawsuit?**
15 **A. I don't know.**
16 **Q. Okay.**
17 **A. Then -- my counsel is indicating that it was.**
18 **So then it is. So I guess I have to say that we must**
19 **have had this.**
20 **Q. Okay.**
21 **A. Okay? I apologize. I'm not trying to -- I**
22 **just don't recognize it offhand.**
23 **Q. Nor do I. And it's not dated, which is part of**
24 **what piqued my curiosity.**

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Eunice Sachs And Associates (708) 709-0500

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3

4 I, LYNN MANGAN, a Notary Public within and
5 for the County of Lake, State of Indiana, and a
6 Certified Shorthand Reporter, CSR No. 84-001449, of
7 the State of Illinois, do hereby certify:

8 That previous to the commencement of the
9 examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;

12 That the foregoing deposition transcript
13 was reported stenographically by me, and was thereafter
14 reduced to typewriting under my personal direction,
15 and constitutes a true record of the testimony
16 given and the proceedings had;

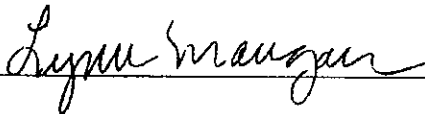
17 That the said deposition was taken before
18 me at the time and place specified;

19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in
23 the outcome of this action.

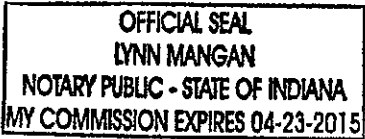
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IN WITNESS WHEREOF, I do hereunto set my
hand and affix my seal of office at Orland Park,
Illinois, this 30th day of October, 2008.



Lynn Mangan, C.S.R.



Notary Public-Lake County, Indiana.
My commission expires April 23, 2015

EXHIBIT 106

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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

DAVID GROCHOCINSKI, not individually)
but solely in his capacity as the Chapter 7)
Trustee for the bankruptcy estate of)
CMGT, INC.,)

Plaintiff,)

v.)

MAYER BROWN ROWE & MAW LLP,)
RONALD B. GIVEN and CHARLES W.)
TRAUTNER,)

Defendants.)

No. 06 C 5486

Judge Virginia M. Kendall

**DEFENDANT MAYER BROWN LLP'S
RESPONSE TO PLAINTIFF'S REQUEST TO ADMIT**

Defendant Mayer Brown LLP, by its attorneys Novack and Macey LLP, in response to Plaintiff's Request to Admit Facts, states as follows:

Request No. 1: The default judgment that Spehar Capital LLC obtained against CMGT, Inc. on March 18, 2004 was obtained as a result of Mayer Brown LLP's negligence.

Response: Defendant Mayer Brown LLP objects to this request on the grounds that it is beyond the scope of the limited discovery permitted by Judge Kendall's order of October 30, 2007. Subject to and without waiving this objection, Defendant Mayer Brown LLP denies this request.

MAYER BROWN LLP

By: /s/ Mitchell L. Marinello
One Of Its Attorneys

Stephen Novack
Mitchell L. Marinello
Steven J. Ciszewski
Novack and Macey LLP
100 N. Riverside Plaza
Chicago, IL 60606
(312) 419-6900
#196796

CERTIFICATE OF SERVICE

Mitchell L. Marinello, an attorney, hereby certifies that he caused a true and correct copy of the foregoing **Defendant Mayer Brown LLP's Response to Plaintiff's Request to Admit** to be served electronically through the court ECF electronic filing process to:

Edward T. Joyce
Arthur W. Aufmann
Robert D. Carroll
Edward T. Joyce & Assoc., P.C.
11 S. LaSalle St.
Chicago, IL 60603

on this 3rd day of December, 2007.

/s/ Mitchell L. Marinello

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

DAVID GROCHOCINSKI, not individually)
but solely in his capacity as the Chapter 7)
Trustee for the bankruptcy estate of)
CMGT, INC.,)

Plaintiff,)

v.)

MAYER BROWN ROWE & MAW LLP,)
RONALD B. GIVEN and CHARLES W.)
TRAUTNER,)

Defendants.)

No. 06 C 5486

Judge Virginia M. Kendall

**DEFENDANT RONALD B. GIVEN'S
RESPONSE TO PLAINTIFF'S REQUEST TO ADMIT**

Defendant Ronald B. Given, by his attorneys Novack and Macey LLP, in response to Plaintiff's First Request to Admit Facts, states as follows:

Request No. 1: The default judgment that Spehar Capital LLC obtained against CMGT, Inc. on March 18, 2004 was obtained as a result of Mayer Brown LLP's negligence.

Response: Defendant Ronald B. Given objects to this request on the grounds that it is beyond the scope of the limited discovery permitted by Judge Kendall's order of October 30, 2007. Subject to and without waiving this objection, Defendant Ronald B. Given denies this request.

RONALD B. GIVEN

By: /s/ Mitchell L. Marinello
One Of His Attorneys

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

CERTIFICATE OF SERVICE

Mitchell L. Marinello, an attorney, hereby certifies that he caused a true and correct copy of the foregoing **Defendant Ronald B. Given's Response to Plaintiff's Request to Admit** to be served electronically through the court ECF electronic filing process to:

Edward T. Joyce
Arthur W. Aufmann
Robert D. Carroll
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11 S. LaSalle St.
Chicago, IL 60603

on this 3rd day of December, 2007.

/s/ Mitchell L. Marinello

EXHIBIT 107

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

David E. Grochocinski

Mark S. Grochocinski

David P. Lloyd

Arthur W. Rummeler

Thomas B. Sullivan,
Of Counsel

August 10, 2005

Mr. Ira Bodenstein
U.S. Trustee-Region 11
227 W. Monroe Street
Suite 3350
Chicago, IL 60606

Re: CMGT, Inc.
No. 04B 31669
Letter of 7/21/05 from Louis Franco

Dear Mr. Bodenstein:

I have received the letter of Mr. Franco dated July 21, 2005 and hope my response will clarify matters for you as well as Mr. Franco.

First, on the issue of notice, a number of the notices of motion were sent to alleged secured creditors c/o Mr. Franco because the document, which allegedly perfected their security interest (the UCC F's) all indicated that the secured party's address was 2S647 White Birch Lane, Wheaton, IL 60187 (see copy of the Kim Quarles UCC I and others enclosed).

I, obviously, did not prepare these documents and if they were not true, then someone intentionally attempted to obtain a security interest in assets of the debtor with false information. I used the last best official address I had for a number of persons, but did use a more current address of the individuals who contacted me during the course of the case. Since this is an involuntary case, with no schedules or statement of affairs and with little or no input other than complaints from former shareholders of alleged secured parties, I think the notice that was sent was based on best official information. I would be happy to send amended notice to these individuals if Mr. Franco would like to provide that information to me either directly or by looking through the boxes of documents he sent to my office.

I have no idea what Mr. Franco is referring to when he alleges there is a demonstrated pattern of making untrue statements to the court. Enclosed is a copy of the docket. It shows only two (2) items that were generated by my office. One is the application to employ counsel and second is the current application which is not set for hearing until August 12, 2005. If he can find a pattern of misstatements to the court, please have him point them out to me.

PL 01449

Paragraph number three of his letter refers to my alleged ignoring of claims of other creditors. Enclosed in your package of materials from Mr. Franco is my letter of December 16, 2004 directed to Kim Quarles. It sets forth my considered belief that the judgment entered in favor of Spehar Capital is final and unappealable. Under the Rooker-Feldman Doctrine, I cannot attack the judgment collaterally and the time to vacate the judgment has expired due in large measure to Mr. Franco's own lack of diligence. Because the judgment is final, affirmative defenses, counterclaims and the like are barred because of res judicata (Please note that a copy of that letter was sent to the debtor's former counsel, Ronald Given at May Brown and I did not receive a call or letter disputing the analysis).

Unless an independent cause of action lies against Spehar Capital, the claims that Mr. Franco are alleging are barred. Subsequent to the judgment in favor of Spehar Capital, a citation issued, was served on the debtor through Mr. Franco and no motion to vacate or set aside the judgment was filed or prosecuted.

However, as you will note from the application for post-petition financing and the attached order, nothing in that document seeks to release Spehar of pre-petition causes of action nor bars such other actions as may be available to the debtor or the trustee. The application merely provides a means for funding the estate and shares with the estate funds that might be made available to it through litigation verses insiders or professionals of the debtors.

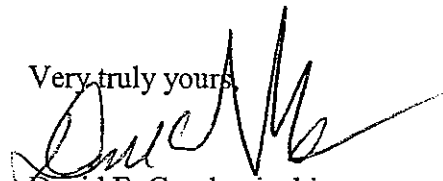
It is always conceivable that additional information will come into my possession that might change or alter my beliefs as to the validity of the judgment or with the ability to vacate same or other causes of action versus Spehar Capital.

However, this is an involuntary case, and with little or no assistance from Mr. Franco, and without funds to hire an accountant or prosecute claims in favor of the estate, little progress can be made.

Lastly, it is always possible that Mr. Franco or other alleged shareholders may have causes of action verses Spehar Capital or Gary Spehar, individually. The bankruptcy court is not the proper forum for such actions and the involuntary case does not prevent such actions.

I hope this satisfies your inquiry and provides an adequate response to Mr. Franco's letter.

Very truly yours,



David E. Grochocinski

DEG/gb
Enclosure

PL 01450

EXHIBIT 108

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

LAW OFFICES
EDWARD T. JOYCE & ASSOCIATES, P.C.
ELEVEN SOUTH LASALLE STREET
SUITE 1600
CHICAGO, ILLINOIS 60603-1211
(312) 641-2600
FAX (312) 641-0360

August 22, 2006

VIA FACSIMILE

James Wong
Fax Number – (630) 993-2229

Re: *CMGT Inc.*

Dear Mr. Wong:

We have been retained by the trustee in bankruptcy for the Estate of CMGT, Inc. to investigate potential claims against CMGT's officers, investors, attorneys, and others relating to the demise of CMGT. Based on our investigation to date, which is not yet complete, you could have exposure to the estate of CMGT Inc. Rather than naming you as a defendant at this time, we would like to discuss a standstill agreement that will permit us to work with you in an effort to resolve our questions, and possibly conclude that a claim against you should not be made. If an agreement cannot be reached, we will be required to name you at this time as a party defendant. We would like to speak with you about what you believe happened at CMGT. We recommend that you engage counsel before speaking to us. We also recommend that you not engage counsel from Mayer Brown Rowe & Maw, LLP, as that firm will likely be a defendant in this matter. We have enclosed a form tolling agreement that must be signed before the close of business on August 22, 2006.

If you have any questions, please call me.

Very truly yours,

EDWARD T. JOYCE & ASSOCIATES, P.C.


Robert D. Carroll

RDC:ya

Encl.

PL 01300

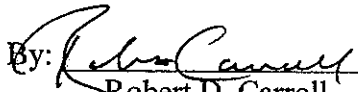
AGREEMENT TOLLING STATUTE OF LIMITATIONS

James Wong and Wong and Knowles, CPA, P.C. ("Wong") hereby agree that the statute of limitations applicable to any and all claims which the Estate of CMGT, Inc. ("Plaintiff") may have against Wong as of August 24, 2006 ("Subject Claims"), to the extent that such statute of limitations has not previously run, shall be tolled until August 24, 2007. By entering into this agreement, Wong does not acknowledge or agree that the Subject Claims exist, or that the Subject Claims have any validity. Wong reserves any and all defenses which he may have to the Subject Claims.

In consideration of Wong's agreement to toll the statute of limitations on the Subject Claims, the Plaintiff agrees to refrain from filing any action against Wong relating to the Subject Claims without first giving Wong 30 days notice.

Dated: _____

Plaintiff,

By: 
Robert D. Carroll
Attorney for Plaintiff

James Wong and Wong and Knowles, CPA, P.C.

By: _____
James Wong

EDWARD T. JOYCE & ASSOCIATES, P.C.

11 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, ILLINOIS 60603
PHONE: (312) 641-2600
FAX: (312) 641-0360
E-MAIL: RCARROLL@JOYCELAW.COM

FAX

To: James Wong **From:** Rob Carroll
Fax: (630) 993-2229 **Pages:** 3
Phone: **Fax:**
Re: The Estate of CMGT, Inc. **Date:** August 22, 2006
Time:

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

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IF YOU NEED ANY PAGES RE-SENT, PLEASE CALL (312) 641-2600.

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03 08/22 10:59 Wong & Knowles TO/FROM
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PL 01302

EXHIBIT 109

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

LAW OFFICES
EDWARD T. JOYCE & ASSOCIATES, P.C.
ELEVEN SOUTH LASALLE STREET
SUITE 1600
CHICAGO, ILLINOIS 60603-1211
(312) 641-2600
FAX (312) 641-0360

August 21, 2006

VIA FACSIMILE

Louis Franco
Fax Number (630) 250-8153

Re: *CMGT Inc.*

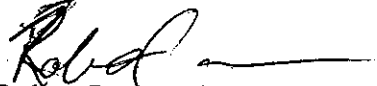
Dear Mr. Franco:

We have been retained by the trustee in bankruptcy for the Estate of CMGT, Inc. to investigate potential claims against CMGT's officers, investors, attorneys, and others relating to the demise of CMGT. Based on our investigation to date, which is not yet complete, you could have exposure to the estate of CMGT Inc. Rather than naming you as a defendant at this time, we would like to discuss a standstill agreement that will permit us to work with you in an effort to resolve our questions, and possibly conclude that a claim against you should not be made. If an agreement cannot be reached, we will be required to name you at this time as a party defendant. Also, given that you were CMGT's president and chief executive officer, we would like to speak with you about what you believe happened at CMGT. We recommend that you engage counsel before speaking to us. We also recommend that you not engage counsel from Mayer Brown Rowe & Maw, LLP, as that firm will likely be a defendant in this matter. We have enclosed a form tolling agreement that must be signed before the close of business on August 22, 2006.

If you have any questions, please call me.

Very truly yours,

EDWARD T. JOYCE & ASSOCIATES, P.C.


Robert D. Carroll

RDC:ya

Encl.

PL 01303


AGREEMENT TOLLING STATUTE OF LIMITATIONS

Louis Franco ("Franco") hereby agrees that the statute of limitations applicable to any and all claims which the Estate of CMGT, Inc. ("Plaintiff") may have against Franco as of August 24, 2006 ("Subject Claims"), to the extent that such statute of limitations has not previously run, shall be tolled until August 24, 2007. By entering into this agreement, Franco does not acknowledge or agree that the Subject Claims exist, or that the Subject Claims have any validity. Franco reserves any and all defenses which he may have to the Subject Claims.

In consideration of Franco's agreement to toll the statute of limitations on the Subject Claims, the Plaintiff agrees to refrain from filing any action against Franco relating to the Subject Claims without first giving Franco 30 days notice.

Dated: _____

Plaintiff,

By: 
Robert D. Carroll
Attorney for Plaintiff

Louis Franco

By: _____
Louis Franco

EDWARD T. JOYCE & ASSOCIATES, P.C.

11 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, ILLINOIS 60603
PHONE: (312) 641-2600
FAX: (312) 641-0360
E-MAIL: RCARROLL@JOYCELAW.COM

FAX

To: Louis Franco **From:** Rob Carroll

Fax: (630) ~~260-0450~~ ²⁶⁰⁻⁹⁸⁹⁹ **Pages:** 3

Phone: **Fax:**

Re: The Estate of CMGT, Inc. **Date:** August 21, 2006

Time:

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:**

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E. T. JOYCE & ASSOC'S.