

CASE NO. 06 cv 5486

ATTACHMENT NO. 3

EXHIBIT Decl. C to Ex 2 motion

TAB (DESCRIPTION) _____

FRANKLIN DECLARATION

Exhibit C

RODI, POLLOCK

JOHN D. CAHILL
JOHN D. PETTKER
WILLIAM R. CHRISTIAN
HENRY P. PRAMOV, JR.
ALLAN E. CERAN
C. STEPHEN DAVIS
CHRIS K. O'NEALL
THOMAS CURTISS, JR.
ELIZABETH B. BLAKELY
TIMOTHY G. CEPERLEY
ALFRED KLEIN
KENNETH A. FRANKLIN
WADE E. NORWOOD
ANDREW W. BODEAU
JEAN M. BEASLEY

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL
A LAW CORPORATION

444 SOUTH FLOWER STREET
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TEL: (213) 895-4900

KARL S. ROCH (1908-1982)
DANIEL C. BOND (1942-1977)
PAUL E. SCHWAB (1896-1973)

OF COUNSEL
JOHN P. POLLOCK
ROBERT A. YAHIRO
DAVID K.W. CHANG

TELECOPIERS
(213) 895-4921
(213) 895-4922
(213) 895-4750

OUR FILE NUMBER
5945-L1

September 11, 2003

VIA FACSIMILE

Louis J. Franco
President and CEO
CMGT, Inc.
2 S 647 White Birch Lane
Wheaton, Illinois 60187

Ronald B. Given
Mayer, Brown, Rowe & Maw
190 S. La Salle Street
Chicago, Illinois 60603-3441

Re: Spehar Capital, LLC v. CMGT, Inc.

Gentlemen:

This will confirm my voicemail message this morning to Mr. Franco and my telephone conversation this morning with Mr. Given.

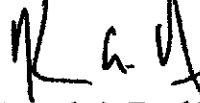
As I advised you, our firm represents Spehar Capital, LLC. We will be proceeding *ex parte* tomorrow, September 12, 2003, at 1:30 p.m., in the Los Angeles County Superior Court, North Central District (Burbank), located at 300 E. Olive Avenue, Burbank, California 91502, in Department "B" to obtain a temporary restraining order and order to show cause regarding a preliminary injunction against CMGT, Inc. The relief sought is as follows:

1. To prevent CMGT from proceeding with the asset sale transaction between CMGT and Newco;
2. To prevent CMGT from consummating, taking any further steps towards consummating the asset purchase agreement between CMGT and Newco, or any other transaction by CMGT which terms do not comply with all terms of the CMGT-Spehar Capital agreement;
3. To prevent CMGT from Selling, transferring, pledging or encumbering any of its assets or property, other than the ordinary course of business; and
4. To prevent CMGT from licensing any of its software.

Louis J. Franco
Ronald B. Given
September 11, 2003
Page 2

If you wish to discuss this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. A. Franklin', with a long horizontal line extending to the right.

Kenneth A. Franklin

KAF:bjw

RODI, POLLOCK, FETTER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-3901
TELEPHONE: (213) 895-4900
FACSIMILE: (213) 895-4921

FACSIMILE COVER SHEET

DATE:	September 11, 2003	TOTAL NUMBER OF PAGES:	3 (including Cover Sheet)
TO:	Louis J. Franco CMGT, Inc. ... Ronald B. Given Mayer, Brown, Rowe & Maw	FAX:	(978) 389-1060
		PHONE:	(630) 260-8807
		FAX:	(312) 708-8137
		PHONE:	(312) 701-7382
FROM:	Kenneth A. Franklin	FILE#:	5945-L1
RE:	Spehar v. CMGT, Inc.		

MESSAGE: Please see attached.

Originals with enclosures will be sent by:

- | | |
|--|--|
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Messenger | <input type="checkbox"/> E-Mail |
| <input checked="" type="checkbox"/> Will not be sent | |

Please call June Weiss at (213) 895-4900, X-233 if you do not receive all pages or if message is not legible.

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Group Send Report

Time : Sep-11-03 11:29am
Tel line :
Name :

Job number : 267
Date : Sep-11 11:24am
Document pages : 03
Start time : Sep-11 11:24am
End time : Sep-11 11:29am

Successful

Fax number

☎+10318050458300018197838810600
☎131270681376

Unsuccessful

Pages sent

FRANKLIN DECLARATION

Exhibit D

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& CAHILL, A Law Corporation
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5 STEVEN A. KLENDLA, LLC
6 STEVEN A. KLENDLA, ESQ. (*Pro hac vice* to be filed)
600 Grant Street, Suite 300
7 Denver, Colorado 80203
Telephone: (303) 785-7777
8 Facsimile: (303) 861-1777

9 Attorneys for Plaintiff,
SPEHAR CAPITAL, LLC, a California limited liability company

10

11

SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

FOR THE COUNTY OF LOS ANGELES

13

(NORTH CENTRAL DISTRICT – BURBANK)

14

SPEHAR CAPITAL, LLC, a California
limited liability company,

15

Plaintiff,

16

v.

17

CMGT, INC., a Delaware corporation, and
DOES 1 through 100, inclusive,

18

Defendants.

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22

I, KENNETH A. FRANKLIN, declare:

23

I am a member in good standing of the State Bar of California, and I am an associate of

24

Rodi, Pollock, Pettker, Galbraith & Cahill, A Law Corporation ("Rodi Pollock"), attorneys of

25

record for SPEHAR CAPITAL, LLC ("Spehar"). I have personal knowledge of the matters set

26

forth herein and if called upon as a witness, could and would testify as follows:

27

1. On September 11, 2003 at approximately 9:00 a.m., I gave telephonic notice to

28

Louis Franco, President and CEO of CMGT, Inc. that on September 12, 2003, at 1:30, p.m.,

ORIGINAL FILED

SEP 12 2003

LOS ANGELES
SUPERIOR COURT

CASE NO. EC 037602

DECLARATION OF KENNETH A. FRANKLIN
RE EX PARTE NOTICE

[Filed Concurrently with *Ex Parte* Application for
Temporary Restraining Order]

Date: September 12, 2003

Time: 1:30 p.m.

Dept: B

ROOI, POLLOCK, PETTNER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-8801
TELEPHONE: (213) 886-1800

1 Spehar would appear ex parte in the Los Angeles County Superior Court, North Central District
2 (Burbank), located at 300 E. Olive, Burbank, California 91502, in Department "B" to obtain a
3 temporary restraining order and order to show cause regarding a preliminary injunction seeking
4 the following relief:

- 5 a) To prevent CMGT from proceeding with the asset sale transaction between CMGT
6 and Newco;
- 7 b) To prevent CMGT from consummating, taking any further steps towards
8 consummating the asset purchase agreement between CMGT and Newco, or any
9 other transaction by CMGT, which terms do not comply with all terms of the
10 CMGT-Spehar Capital, LLC agreement;
- 11 c) To prevent CMGT from selling, transferring, pledging or encumbering any of
12 CMGT's assets or property other than the ordinary course of business; and
- 13 d) To prevent CMGT from licensing any of its software.

14 Mr. Franco did not answer his telephone and the message was left on his voice mail. I also faxed
15 Mr. Franco a confirming letter, a copy of which is attached hereto as Exhibit A

16 2. On September 11, 2003 at approximately 9:05 a.m., I gave telephonic notice to
17 Ronald Given, attorney for CMGT, Inc. that on September 12, 2003, at 1:30, p.m., Spehar would
18 appear ex parte in the Los Angeles County Superior Court, North Central District (Burbank),
19 located at 300 E. Olive, Burbank, California 91502, in Department "B" to obtain a temporary
20 restraining order and order to show cause regarding a preliminary injunction seeking the following
21 relief:

- 22 a) To prevent CMGT from proceeding with the asset sale transaction between CMGT
23 and Newco;
- 24 b) To prevent CMGT from consummating, taking any further steps towards
25 consummating the asset purchase agreement between CMGT and Newco, or any
26 other transaction by CMGT, which terms do not comply with all terms of the
27 CMGT-Spehar Capital, LLC agreement;
- 28 c) To prevent CMGT from selling, transferring, pledging or encumbering any of

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CMGT's assets or property other than the ordinary course of business; and

d) To prevent CMGT from licensing any of its software.

I also faxed Mr. Given a confirming letter, a copy of which is attached hereto as Exhibit A.

4. Mr. Given advised me that no one would be appearing on behalf of CMGT, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 12th day of September 2003, at Los Angeles, California.


Kenneth A. Franklin

Rodi, Pollock, Fetter, Galbraith & Cahill
A LAW CORPORATION
444 SOUTH PLOVER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-3901
TELEPHONE (213) 698-4990

FRANKLIN DECLARATION

Exhibit E

Rodi Pollock

JOHN D. CAHILL
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HENRY P. FRAMOV, JR.
ALLAN E. CERAN
C. STEPHEN DAVIS
CRIS K. ONEALL
THOMAS CURTISS, JR.
ELIZABETH B. BLAKELY
TIMOTHY G. CEPERLEY
ALFRED KLEIN
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JEAN M. BEASLEY

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DANIEL C. BOND (1942-1977)
PAUL E. SCHWAB (1895-1973)

OF COUNSEL
JOHN P. POLLOCK
ROBERT A. YANIRO
DAVID K.W. CHANG

TELECOPIERS
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(213) 895-4822
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OUR FILE NUMBER
5945-L1

September 16, 2003

VIA FACSIMILE -- (312) 706-8137
and VIA U.S. MAIL

Ronald B. Given
Mayer, Brown, Rowe & Maw
190 S. La Salle Street
Chicago, Illinois 60603-3441

Re: Spehar Capital, LLC v. CMGT, Inc.

Dear Mr. Given:

Enclosed please find a copy of the Temporary Restraining Order issued by the Los Angeles Superior Court on Friday. To expedite this process we attempted to directly serve Louis Franco, but have been advised by our process server that Mr. Franco is avoiding service. As a result, we have served CMGT in Delaware as provided by Delaware law.

If you would like a copy of the complaint and moving papers, please call me and we will be happy to provide them by Federal Express or facsimile.

If you have any questions, please do not hesitate to call.

Very truly yours,


Kenneth A. Franklin

KAF:bjw

1 RODI, POLLOCK, PETTKER, GALBRAITH
& CAHILL, A Law Corporation
2 ANDREW W. BODBAU (SBN 183600)
KENNETH A. FRANKLIN (SBN 143809)
3 444 South Flower Street, Suite 1700
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4 Telephone: (213) 895-4900
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5
6 STEVEN A. KLEND, LLC
STEVEN A. KLEND, ESQ. (*Pro hac vice* to be filed)
600 Grant St., Suite 300
7 Denver, Colorado 80203
Telephone: (303) 785-7777
8 Facsimile: (303) 861-1777

9 Attorneys for Plaintiff
SPEHAR CAPITAL, LLC, a California limited liability company

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13 (NORTH CENTRAL DISTRICT – BURBANK)

14 SPEHAR CAPITAL, LLC, a California
limited liability company,
15
16 Plaintiff,
17
18 v.
CMGT, INC., a Delaware corporation, and
DOES 1 through 100, inclusive
19
20 Defendants.

CASE NO. EC 037602

ORDER TO SHOW CAUSE RE PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER

Date: 10-03-03
Time: 9:00 a.m.
Dept. NC-A

21 Upon reading the verified complaint of plaintiff Spehar Capital, LLC ("Spehar") on file
22 herein, Spehar's *ex parte* application and accompanying memorandum of points and authorities
23 and declarations, and it appearing to the satisfaction of the Court that this is a proper case for the
24 granting of an order to show cause and temporary restraining order, and that unless the temporary
25 restraining order prayed for be granted against defendant CMGT, Inc. ("CMGT"), CMGT will
26 cause great and irreparable injury before the hearing on the order to show cause,

27 IT IS HEREBY ORDERED that CMGT appear in Department ~~X~~ of this Court, located at
28 300 East Olive, Burbank, California, on 10/3/, 2003, at 9:00 a.m., or as soon

ORIGINAL FILED
SEP 12 2003
LOS ANGELES
SUPERIOR COURT

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE: (213) 895-4900

ROD, POLLOCK, FITTNER, GALBRAITH & CAHILL
ALAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2501
TELEPHONE: (213) 696-4600

1 thereafter as the matter may be heard, then and there to show cause, if any they have, why it, and
2 its officers, agents, servants, employees, representatives, and all persons acting in concert or
3 participating with them, should not be enjoined and restrained during the pendency of this action
4 from engaging in, committing, or performing, directly or indirectly, any and all of the following
5 acts:

- 6 (a) proceeding with the asset sale transaction between CMGT and Newco;
7 (b) consummating, or taking any further steps toward consummating the asset-
8 purchase transactions between CMGT and Newco, or any other transaction by CMGT whose
9 terms do not comply with all terms of the CMGT-Spehar agreement;
10 (c) selling, transferring, pledging or encumbering any of CMGT's assets or property,
11 other than in the ordinary course of its business; and
12 (d) licensing any of CMGT's software.

13 IT IS FURTHER ORDERED that pending the hearing and determination on the order to
14 show cause, CMGT, and its officers, agents, servants, employees, representatives, and all persons
15 acting in concert or participating with them, shall be and are hereby restrained and enjoined from
16 engaging in, committing, or performing, directly or indirectly, any and all of the following acts:

- 17 (a) proceeding with the asset sale transaction between CMGT and Newco;
18 (b) consummating, or taking any further steps toward consummating the asset-
19 purchase transactions between CMGT and Newco, or any other transaction by CMGT whose
20 terms do not comply with all terms of the CMGT-Spehar agreement; and
21 (c) selling, transferring, pledging or encumbering any of CMGT's assets or property,
22 other than in the ordinary course of its business; and
23 (d) licensing any of CMGT's software.

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IT IS FURTHER ORDERED that copies of Spehar's *ex parte* application and accompanying memorandum of points and authorities, declarations, and complaint be served upon CMGT not later than 9/17/2003, by 5:00 p.m. .
LET THE ABOVE ORDER ISSUE.

Dated: September 12, 2003



Judge, Los Angeles County Superior Court
Michael S. Mind

ROOI, FOLLOCK, PEITKER, GALBREATH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE: (213) 895-4000

Confirmation Report - Memory Send

Time : Sep-16-03 11:16am
Tel line :
Name :

Job number : 390
Date : Sep-16 11:11am
To : 10314050450300010131270601370
Document pages : 05
Start time : Sep-16 11:11am
End time : Sep-16 11:16am
Pages sent : 05
Status : OK
Job number : 390

***** SEND SUCCESSFUL *****

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE: (313) 895-4900
FACSIMILE: (313) 895-4921

FACSIMILE COVER SHEET

DATE: September 16, 2003
TO: Ronald B. Given
Meyer, Brown, Rowe & Maw
FROM: Kenneth A. Franklin
RE: Spehar v. OMTG, Inc.

TOTAL NUMBER OF PAGES: 5
(Including Cover Sheet)
FAX: (312) 706-8137
PHONE: (312) 701-7352
FILES: 5945-L1

MESSAGE: Please see attached.

Originals with enclosures will be sent by:

- | | | | |
|-------------------------------------|------------------|--------------------------|-------------------|
| <input checked="" type="checkbox"/> | U.S. Mail | <input type="checkbox"/> | Overnight Courier |
| <input type="checkbox"/> | Messenger | <input type="checkbox"/> | E-Mail |
| <input type="checkbox"/> | Will not be sent | | |

Please call June Weiss at (313) 895-4900, X-233 if you do not receive all pages or if message is not legible.

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FRANKLIN DECLARATION

Exhibit F

Ken Franklin

From: June Weiss
Sent: September 19, 2003 1:57 PM
To: 'RGiven@mayerbrownrowe.com'
Cc: Ken Franklin
Subject: Spehar Capital, LLC v. CMGT, Inc., et al.

Per Kenneth Franklin's instructions, attached please find the following documents in the above-referenced matter:

1. Complaint
2. Ex Parte Application for Temporary Restraining Order;
3. Memorandum of Points and Authorities in Support of Ex Parte Application;
4. Declaration of Kenneth A. Franklin in Support of Ex Parte Application; and
5. Declaration of R. Gerard Spehar in Support of Ex Parte Application.

The exhibits to these documents are not in PDF format and so are not attached. We believe that you have copies of the exhibits; however, if you would like us to fax you those exhibits, please call me.



Complaint.pdf



Ex Parte App.pdf



P+A.pdf



KAF Declar.pdf



RGS Declar.pdf

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL

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FRANKLIN DECLARATION

Exhibit G

ROD POLLOCK

JOHN D. CAHILL
JOHN D. PETTKER
WILLIAM R. CHRISTIAN
HENRY P. PRAMOV, JR.
ALLAN E. CERAN
C. STEPHEN DAVIS
CRIS K. O'NEALL
THOMAS CURTIS, JR.
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DANIEL C. BOND (1942-1977)
PAUL E. SCHWAB (1898-1973)

OF COUNSEL
JOHN P. POLLOCK
ROBERT A. YAHRO
DAVID K.W. CHANG

TELECOPIERS
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(213) 895-4750

OUR FILE NUMBER
5945-L1

October 10, 2003

VIA FACSIMILE
and VIA U.S. MAIL

Louis J. Franco
President and CEO
CMGT, Inc.
2 S 647 White Birch Lane
Wheaton, Illinois 60187

Ronald B. Given
Mayer, Brown, Rowe & Maw
190 S. La Salle Street
Chicago, Illinois 60603-3441

Re: Spehar Capital, LLC v. CMGT, Inc.

Gentlemen:

Attached please find the Preliminary Injunction and Bond. These documents have been properly served on CMGT, and the attached copies are being provided as a courtesy.

If you have any questions or wish to discuss this matter please call me.

Very truly yours,


Kenneth A. Franklin

KAF:bjw
Enclosure

cc: R. Gerard Spehar
Steven Klenda, Esq.

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE (213) 895-4900

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4 Telephone: (213) 895-4900
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5
6 STEVEN A. KLEND A, LLC
STEVEN A. KLEND A, ESQ. (Pro hac vice to be filed)
600 Grant St., Suite 300
7 Denver, Colorado 80203
Telephone: (303) 785-7777
8 Facsimile: (303) 861-1777
9 Attorneys for Plaintiff,
SPEHAR CAPITAL, LLC, a California limited liability company

FILED
LOS ANGELES SUPERIOR COURT
OCT 03 2003
JOHN A. CLARKE, CLERK
Jeff W. Lipp
BY JEFF W. LIPP, DEPUTY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13 (NORTH CENTRAL DISTRICT -- BURBANK)

14 SPEHAR CAPITAL, LLC, a California
limited liability company,
15 Plaintiff,
16
17 v.
18 CMGT, INC., a Delaware corporation, and
DOES 1 through 100, inclusive
19 Defendants.

CASE NO. EC 037602

**[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION AND
CONTINUING TEMPORARY RESTRAINING
ORDER TO ALLOW SERVICE**

Date: October 3, 2003
Time: 9:00 a.m.
Dept: NC"A"

21 The Order to Show Cause of Spehar Capital LLC ("Spehar") by which Spehar requested
22 issuance of a Preliminary Injunction preventing the dissipation of the assets of CMGT came on
23 regularly for hearing on October 3, 2003, at 9:00 a.m. in Department NC"A" of the Los Angeles
24 Superior Court, the Honorable David M. Schacter, Judge, presiding. Spehar was represented by
25 Rodi, Pollock, Pettker, Galbraith & Cahill by Andrew W. Bodeau. Spehar's lead counsel, Steven
26 A. Klenda was also present. The Court has read the verified complaint of plaintiff Spehar Capital,
27 LLC ("Spehar") on file herein, Spehar's application for a preliminary injunction, and the
28 accompanying memorandum of points and authorities. The Court accepted the Declarations, and

ROD, POLLOCK, PLETNER, GALBRAITH & CAHILL
LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2601
TELEPHONE: (213) 698-4800

1 the Supplemental Declaration of Gerry Spehar, and took notice of the various proofs and
2 declarations of services on file with this court, and is sufficiently advised of their premises. The
3 Court has also held a hearing on Spehar's application. Being duly and sufficiently advised, the
4 Court FINDS that:

5 1. CMGT was validly and properly served with Spehar's Verified Complaint,
6 application for a preliminary injunction, memorandum of points and authorities and its
7 declarations on September 16, 2003. In addition, CMGT's President, Lou Franco, also received a
8 copy of these documents via Federal Express on September 19, 2003.

9 CMGT was validly and properly served with this Court's Order to Show Cause re:
10 Preliminary Injunction and Temporary Restraining Order on September 16, 2003. On September
11 23, 2003, CMGT was properly and validly served with a copy of the Order to Show Cause re:
12 Preliminary Injunction and Temporary Restraining Order that had been domesticated in Illinois.

13 2. The Court has jurisdiction over CMGT under Cal. Code Civ. P. 410.10, because
14 CMGT has purposefully availed itself of the benefits and burdens of doing business in California,
15 and CMGT has sufficient minimum contacts with California to satisfy due process. CMGT has
16 directed a steady and numerous stream of business contacts and communications to California
17 during about the past two years. Specifically, CMGT contracted with CMGT in California;
18 deliberately directed numerous daily emails and telephone conversations to Spehar Capital in
19 California during this time; has clients in California with whom who CMGT's President traveled
20 to California to meet at least once; and attempted to raise capital from at least one group of
21 investors who are located in California, the Washoe tribe.

22 3. CMGT did not file any timely opposition to Spehar's application for a preliminary
23 injunction or appear at the hearing on this application.

24 4. Spehar has shown that it is has a strong likelihood of prevailing on the merits of its
25 claims for breach of contract and constructive trust. The likelihood of succeeding on each of these
26 claims independently supports the issuance of a preliminary injunction.

27 5. Spehar will be irreparably harmed if an injunction is not issued. The protective tag-
28 along and exclusivity provisions of Spehar Capital's contract with CMGT will be rendered moot,

Rico, Pollock, Petter, Galbraith & Cahill
ALAN CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-3801
TELEPHONE (213) 994-4900

1 CMGT's assets will be depleted, and Spehar will be left with difficult-to-value claims against
2 CMGT's debt-ridden shell, whose only asset will be a small minority interest in a new, untested
3 and unproven entity.

4 6. CMGT has not shown cause why this Court should not issue a preliminary
5 injunction.

6 THEREFORE, the Court GRANTS Spehar's application and ORDERS that:

7 1. CMGT and its officers, agents, servants, employees, representatives, and all
8 persons acting in concert or participating with them, ARE ENJOINED AND RESTRAINED
9 during the pendency of this action from engaging in, committing, or performing, directly or
10 indirectly, any and all of the following acts:

11 (a) proceeding with the asset sale transaction between CMGT and Newco;

12 (b) proceeding with an asset purchase or any other financing arrangement of
13 any type between CMGT and any other person or entity;

14 (c) consummating, or taking any further steps toward consummating, the asset-
15 purchase transaction or any other financing transaction between CMGT and Newco, or any other
16 transaction of any type by CMGT whose terms do not expressly acknowledge, incorporate and
17 comply with all terms of the CMGT-Spehar agreement, including, but not limited to, the
18 agreement's exclusivity provisions;

19 (d) selling, transferring, pledging or encumbering any of CMGT's assets or
20 property, other than in the ordinary course of its business; and

21 (e) licensing any of CMGT's software.

22 2. The Court's September 12, 2003, temporary restraining order shall remain in full
23 force and effect through midnight on Oct 9, 2003, to allow Spehar to post a bond in the
24 amount below and serve CMGT with this order.

25 3. Spehar shall post a bond of \$25,000⁰⁰ within 5 days of this order.

26 LET THE ABOVE ORDER ISSUE.

27 Dated: October 3, 2003

D. M. Scharter
Judge, Los Angeles County Superior Court

28

1 RODI, POLLOCK, PETTKER, GALBRAITH
& CAHILL, A Law Corporation
2 ANDREW W. BODEAU (SBN 183600)
KENNETH A. FRANKLIN (SBN 143809)
3 444 South Flower Street, Suite 1700
Los Angeles, California 90071-2901
4 Telephone: (213) 895-4900
Facsimile: (213) 895-4921
5

ORIGINAL FILED
OCT - 7 2003
LOS ANGELES
SUPERIOR COURT

6 Attorneys for Plaintiff
SPEHAR CAPITAL, LLC, a California limited liability company

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 (NORTH CENTRAL DISTRICT -- BURBANK)

11 SPEHAR CAPITAL, LLC, a California
limited liability company,
12
13 Plaintiff,
14 v.
15 CMGT, INC., a Delaware corporation, and
DOES 1 through 100, inclusive,
16
17 Defendants.

CASE NO. EC 037602

**PROOF OF SERVICE OF CIVIL BOND
AND DECLARATION RE DILIGENCE
TO EFFECT PERSONAL SERVICE BY
GRANVILLE MORRIS**

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE: (213) 895-4900

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	FOR COURT USE ONLY	
ATTORNEY FOR (Name):		Ref. No. or File No.		
Insert name of court and name of judicial district and branch court, if any: IN THE SUPERIOR COURT COUNTY OF LOS ANGELES STATE OF CALIFORNIA				
SHORT TITLE OF CASE: SPEAR CAPITAL V. CMGT				
PROOF OF SERVICE	HEARING DATE:	JURY:	DEPT. NO.:	CASE NUMBER: EC 037602

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the (specify documents):
UNDERTAKING UNDER SECTION 529 C.C.P. FOR PRELIMINARY INJUNCTION

2. a. Party served (specify name of party as shown on the documents served):
CMGT, INC

b. Person served: party in item 2a other (specify name and title or relationship to the party named in item 2a):
DELAWARE SECRETARY OF STATE TOWNSEND BLDG. DOVER DE by MICHELE PISARSKI

c. Address: **DOVER DE**

3. I served the party named in item 2

a. by personally delivering the copies (1) on (date): **10/07/03** (2) at (time): **2:30pm**

b. by leaving the copies with or in the presence of (name and title or relationship to person indicated in item 2b):

- (1) (business) a person at least 18 years of age apparently in charge of the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
- (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the person served. I informed him or her of the general nature of the papers.
- (3) on (date): (4) at (time):
- (5) A declaration of diligence is attached. (Substituted service on natural person, minor, conservatee, or candidate)

c. by mailing the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid, (2) from (city):

- (1) on (date):
- (3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me.
- (4) to an address outside California with return receipt requested. ← (Attach completed form.) #

d. by causing copies to be mailed. A declaration of mailing is attached.

e. other (specify other manner of service and authorizing code section):

4. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify):
- c. on behalf of (specify):

- under: CCP 416.10 (corporation)
- CCP 416.20 (defunct corporation)
- CCP 416.40 (association or partnership)

- CCP 416.60 (minor) other:
- CCP 416.70 (conservatee)
- CCP 416.90 (individual)

5. Person serving (name, address, and telephone No.):

GRANVILLE MORRIS
PO BOX 1360 WILMINGTON DE 19899
302-475-2600

- a. Fee for service: \$
- b. Not a registered California process server.
- c. Exempt from registration under B&P § 22350(b).
- d. Registered California process server.
 (1) Employee or independent contractor.
 (2) Registration No.:
 (3) County:

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7. I am a California sheriff, marshal, or constable and I certify that the foregoing is true and correct.

Date: **10/07/03**



SIGNATURE

NAME, ADDRESS & PHONE NUMBER
Attorney

Attorney for _____

SUPERIOR

COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NUMBER
EC 037602

DECLARATION RE DILIGENCE
TO EFFECT PERSONAL SERVICE

I am and was on the dates herein mentioned, over the age of 18 years and not a party to the action. I received the within process on 10/07/03 10 2003, and that after due and diligent effort, I have been unable to effect personal service on the within named:

CMGT, INC

<u>ADDRESS</u>	<u>DATES AND TIMES ATTEMPTED</u>	<u>REASON FOR NON SERVICE</u>
9 E. LOOKERMAN ST DOVER DE	10/07/03 2:15pm	NATIONAL REG. AGENTS REFUSED SERVICE

Executed on 10/07/03 at WILMINGTON DE XXXXXX California. I declare under penalty of perjury that the foregoing is true and correct.

GRANVILLE MORRIS
(Type or print Name of Declarant)


(Signature of Declarant)

AMERICAN CONTRACTORS INDEMNITY COMPANY

In The SUPERIOR Court
County of LOS ANGELES
State of California

ORIGINAL FILED
OCT - 7 2003
LOS ANGELES
SUPERIOR COURT

Spehar Capital, LLC.,
a California limited liability company,

Plaintiff,

vs.

CMGT, Inc., a Delaware corporation;
and Docs 1 through 100, inclusive,

Defendants.

Case No. EC 037602

UNDERTAKING UNDER
SECTION 529 C.C.P.

All papers and notices may be served at
American Contractors Indemnity Company
9441 Airport Blvd., 9th Floor Los Angeles, CA 90045

WHEREAS, the above named _____ Plaintiff _____, as Principal
desires to give an undertaking for _____ Preliminary Injunction _____ as
provided by Section 529 C.C.P.

NOW, THEREFORE, the Surety, does hereby obligate itself, jointly and severally, to _____
_____The above named Defendants _____
under said statutory obligations in the sum of Twenty five thousand and no/100 _____
_____ Dollars (\$ 25,000.00)

IN WITNESS WHEREOF, The corporate seal and name of the said Surety Company is hereto affixed and attested by Jeff Aase
who declares under penalty of perjury that he is its duly authorized Attorney-in-Fact acting under an unrevoked power of attorney
on file with the Clerk of the County in which above entitled Court is located.

Executed at Los Angeles, California on October 3, 2003

Bond No. 414297

The premium charge for this bond
is \$ 500.00 per annum.

AMERICAN CONTRACTORS INDEMNITY COMPANY


Jeff Aase Attorney-in-Fact

CIVIL BOND

FAXED

RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL

A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE: (213) 895-4900
FACSIMILE: (213) 895-4921

FACSIMILE COVER SHEET

DATE: October 10, 2003
TOTAL NUMBER OF PAGES: 9
(Including Cover Sheet)

TO: Louis J. Franco
CMGT, Inc.
FAX: (978) 389-1060
PHONE: (630) 260-9507

Ronald B. Given
Mayer, Brown, Rowe & Maw
FAX: (312) 706-8137
PHONE: (312) 701-7382

FROM: Kenneth A. Franklin
FILE#: 5945-L1

RE: Spehar v. CMGT, Inc.

MESSAGE: Please see attached.

Originals with enclosures will be sent by:

- U.S. Mail Overnight Courier
 Messenger E-Mail
 Will not be sent

Please call June Weiss at (213) 895-4900, X-233 if you do not receive all pages or if message is not legible.

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RODL, POLLOCK, PETTKER, GALBRAITH & CAHILL
A LAW CORPORATION
444 SOUTH FLOWER STREET, SUITE 1700
LOS ANGELES, CALIFORNIA 90071-2901
TELEPHONE: (213) 595-4900
FACSIMILE: (213) 595-4981

FACSIMILE COVER SHEET

DATE:	October 10, 2003	TOTAL NUMBER OF PAGES:	9 (including Cover Sheet)
TO:	Louis J. Franco CMGT, Inc. Ronald B. Given Mayer, Brown, Rowe & Maw	FAX:	(978) 389-1060
		PHONE:	(630) 260-6507
		FAX:	(312) 708-5137
		PHONE:	(312) 701-7352
FROM:	Kenneth A. Franklin	FILE#:	5045-L1
RE:	Spehar v. CMGT, Inc.		

MESSAGE: Please see attached.

Originals with enclosure will be sent by:

- | | | | |
|-------------------------------------|------------------|--------------------------|-------------------|
| <input checked="" type="checkbox"/> | U.S. Mail | <input type="checkbox"/> | Overnight Courier |
| <input type="checkbox"/> | Messenger | <input type="checkbox"/> | E-Mail |
| <input type="checkbox"/> | Will not be sent | | |

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Group Send Report

Time : Oct-10-03 03:51pm
Tel line :
Name :

Job number : 970
Date : Oct-10 03:45pm
Document pages : 08
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End time : Oct-10 03:51pm

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Unsuccessful

Pages sent

Spehar Motion to Alter or Amend

EXHIBIT 2

Subject: Re: memo in word doc
From: Louman01@aol.com
Date: Sun, 6 Apr 2003 17:07:55 EDT
To: patrick.duke@sealaska.com

Patrick:

Attached is your memo to Chris McNeil with my suggested revisions (Word doc). Your 1st draft caught all the highlights and I took the liberty of formatting the document, changing some things for accuracy and adding other items I believe will make it a stronger presentation. Check it out and let me know how it works for you...I left the "track changes" feature on so you can see what changed!

I'll try to reach you by phone today to discuss, otherwise you can call me on my land line (630-260-9507) or cellphone (630-215-8193).

Best regards,

Lou

Louis J. Franco, RHU
Chairman, 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

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CMGT, Inc. Management

PatrickDuke_MemoToChrisMcNeil_Draftv2.doc



TO: Chris E. McNeil, Jr.
President & CEO

FROM: Patrick W. Duke, CFA
Treasurer & CIO

CC: Richard P. Harris
EVP

William F. Strafford
EVP & CFO

SUBJECT: CMGT Due Diligence

DATE: April 1, 2003

(NOTE - What's missing from this review is the articulation of CMGT's current position - i.e. they have not been able to close the loop with many potential clients, industry partners, and law firms until they find an investor. This has been a severe marketing impediment for nearly two years as they've been tantalizingly close with two venture capital firms and for the past year with Sealaska. This needs to be articulated in the memo, but I'm not exactly sure where it goes. I still need to finalize the competition section and the customer comments as I'm waiting to finish these calls.)

I'm in the final stages of the customer, Industry and competition Due Diligence analysis for the potential CMGT Investment. There are a few industry sources left to contact, but by and large our due diligence is complete.

The Market - Absence & Disability Management (ADM) & FMLA Tracking & Compliance

From our conversations with existing customers, potential customers and Industry leaders, there are two common themes:

1. There is a definite and growing awareness of the costs associated with absences and disability management; and
2. There is a heightened awareness of the risks involved in administration of the FMLA.



- **ADM Management** - According to Mercer's 2002 Employers' Time-Off and Disability Programs Survey, time-off and disability program costs averaged 15% of payroll in 2001 and 47% of the 723 companies surveyed said that reducing the cost of absence on operations is a top priority. 47% also stated that tracking/reporting systems for disability and absence was a priority. According to Tom Parry, President of the Integrated Benefits Institute (IBI), studies show that workforce productivity is the most important issue facing companies today. According to Tom, when companies such as Dow Chemical looked at the overall cost of absenteeism, the data was compelling enough that the CFO quickly became an avid supporter of comprehensive absence tracking systems. Industry estimates from the Washington Business Group on Health (WBGH) show that for every \$1 spent on absence management, a company saves \$2. A study by the same group shows that companies integrating disability programs save an average of 19% of total disability costs. We've seen this first hand, as I'll discuss later when I review the success stories of Atlanta Gas & Light Resources, Inc. (AGL), a current CMGT client since 4/1/2001.

- **FMLA Tracking & Administration** - In *Schultz v. Advocate Health*, the 45-year-old plaintiff sued his employer for being unfairly penalized for taking time off to care for his aging parents. Schultz was entitled to take 12 weeks off after his FMLA request was granted. During his time off, his employer instituted a monthly performance policy that graded employees by the amount of work they completed in a set period of time. Schultz won the case and was awarded \$11.65 million against his employer. In addition, he was awarded \$450,000 each from his two direct supervisors and the issue of equitable damages remains before the Court. While these judgments are surely to be reduced by the 7th circuit, they clearly show the risks employers and supervisors have if FMLA events are not handled to the letter of the law. This has led to a heightened awareness of absence management, an expectation to see more FMLA claims against employers as baby boomers face the predicament of caring for aging parents, and the need in the industry to offer FMLA tracking and compliance service.

In the 2002 Mercer report, only 21% of the employers surveyed said they have been free of any administrative challenges related to FMLA, and 11% of respondents now outsource some or all FML cases, up from 8% and 2% in 2001 and 2000. The top four administrative problems reported were managing intermittent leave (45%), recordkeeping/tracking use of leave (45%), timely



notification of employee rights (28%) and coordination with other time-off plans (24%).

Bob Wysocki and I had the opportunity to meet with partners from the law firm of Jackson Lewis, LLC in White Plains, New York. Jackson Lewis is the premier employment law firm in the country with about 400 attorneys, over 40 partners and 20 offices nationwide. Their specialty is preventative strategies in the practice of workplace law and their only business is workplace law. The senior partners we met included Michael Lotito and Frances Alvarez, who both specialize in the areas of FMLA/FSLA Disability Management. According to Michael and Frances, over 80% of their clients list FMLA management as their number one human resource concern. From their standpoint, they view FMLA management as the single biggest growth area of their business, especially with the evolving state laws, i.e., California Paid Leave Law. They have actively looked for a solution for their clients in the ADM/FMLA area for several years. Their due diligence has shown that CMGT's product will offer the best solution for their clients. They intend to fully recommend and co-market CMGT's outsourcing to all their clients who are experiencing ADM & FMLA problems. Jackson Lewis will not receive any compensation from CMGT on this strategic partnership. They need a product to address what is fast becoming the single largest need of their clients.

In addition to the Federal requirements, 45 States, including California and Washington, have implemented unpaid leave laws. California has also enacted the nation's first paid leave law (S.1661) and 26 other states have similar legislation pending. In addition, Senator Dodd recently introduced S.304 that would further expand FMLA to cover employers with as few as 25 employees and allow employees to take FMLA leave in the event of domestic violence. S.304 would also establish a \$400 million pilot grant program to help states design ways to offer six weeks of partially or fully paid leave for employees who take time off to care for a sick child or other family member. As stated above, California has such a paid leave program, which goes into effect in October, 2003. State paid leave laws make it even more likely that employers will use services like CMGT's, because of increased and more complex tracking requirements and increased employee usage (since they will now be paid).

Integrated Disability management is already a complex issue since it includes short and long term disability benefits, workers' compensation (WC), FMLA



and leave policies that include sick time. Absence management attempts to track and categorize all types of paid and unpaid absences. The following quote, taken from the 8/20/02 issue of *Insurance Letter* exemplifies the problems of ADM and FMLA compliance and the untapped business opportunity that exists in the ADM/FMLA field;

"Effective absence management can reduce costs and improve productivity, but many employers lack the resources to track absences," says Maria Morris, vice president of MetLife Disability, a leading group disability carrier. "Many companies are overwhelmed with the complexities involved in tracking absences related to workers' compensation, disability and the Family & Medical Leave Act (FMLA), among others. Finding an internal or outsourced solution for tracking and managing absences is of increasing concern to many employers."

"The first and important step for a more effective absence management program is to have multiple benefits - such as workers' comp, short term and long term disability, and FMLA - managed through a *single service*,"

Customer & Potential Customer Contacts - There are four major themes from the quote above:

1. Effective absence management can reduce costs and improve productivity;
2. Employers lack the resources to track absences;
3. Companies are overwhelmed with the complexities of FMLA; and
4. The first and most important step for a more effective absence management program is to have multiple benefits managed through a single service (like CMGT's single source intake approach).

These themes were touched on by each of the customers and potential customers we contacted.

- Bill Strafford and I met with Mr. Hugo Aquas, the Human Resource manager for Providence Health System (PHS). PHS is one of the largest health



care systems in the Pacific Northwest, with over 20 hospitals in 4 states and 33,000 employees. This was an important meeting as we needed to speak with a large employer about their FMLA/ADM needs. Hugo stated that FMLA administration is his single biggest "headache." At his St. Peter's hospital alone he has two dedicated employees who's only job is FMLA administration. His overriding concern is that Providence's FMLA administration is not being handled consistently across the vast employee base and further that it is not handled to the letter of the law. CMGT presented its First InTouch product to Hugo, his HR manager at St. Peter's, and the various Union representatives. They were extremely impressed with the ability of the product to handle their needs. The HR manager inquires weekly about when she will have the product in place. Of equal importance was the "sign off" of the union representatives. Hugo was concerned that the Union would view the product as a further "big brother" tactic from Sr. Management. The reps overwhelming voted to back the product and felt it would be a huge benefit to the members.

- Sealaska initiated a conversation with the Alyeska Pipeline Service Company in regards to their ADM/FMLA needs. Kathy LaForest, HR Manager responded to my email immediately and stated, "What perfect timing, we've been struggling with our case management and FMLA administration for our 1,000 employees." Sealaska and CMGT presented, via conference call and PowerPoint presentation, the First-In-Touch product to Kathy and Alyeska's benefits manager, in-house RN and Diversity Supply/Contracts manager. All of the Alyeska personnel were extremely impressed with the product and its ability to increase productivity and address the FMLA compliance requirements. Kathy mentioned that they are interested in the highest level of service from CMGT, or the Total Absence Management product at \$4.50 per employee per month. Kathy has indicated to me that she is recommending to senior management that they proceed with a contract.

- I contacted the four direct clients of CMGT: eBay (client since 1/1/2002), Howard Hughes Medical Institute (client since 4/1/2000), ZiLOG (client since 1/1/2003) and AGL (client since 4/1/2001).

- Ross Hollander, HR Manager for AGL has the highest praise for the CMGT product. AGL found itself facing 700% and 900% annual increases in its STD and LTD premiums. After one year of outsourcing its ADM/FMLA to CMGT, AGL saw its LTD claims fall from 20 to 5. AGL has over 2,100 employees throughout Georgia.

Ross stated that he was convinced that he was not following the letter of the law on FMLA and that it was not being handled consistently across his employees. He's seen first hand the productivity gains from using CMGT for ADM.

- Janice Baez, HR and Benefits manager for eBay raved about the ability to customize reporting with the product. eBay did not have the internal ability to track absences. Without the ability to track absences, they were not able to measure the bottom line effects. She feels very strongly that with the CMGT product they now have the ability to accurately track and manage absences and comply with the onerous FMLA requirements. eBay recently closed its acquisition of PayPal, and added its 1,400 employees to the product. The transition was seamless from her point of view.
- Diane Irving, Associate Director Human Resources for Howard Hughes Medical Institute discussed the progression that led to the CMGT relationship. She stated that the relationship grew out of their need to find support in their efforts to manage their disability program after the advent of FMLA. She stated that the FMLA act added a level of complexity to absence management that "absolutely drained our internal resources." One of the key benefits of the CMGT package was the 24/7 self-serve web-based management reporting system, as HHMI's workforce is distributed throughout the country, in somewhat remote locations.

Industry Contacts - In order for its ADM/FMLA administration business to take off, CMGT must have strong relationships with the key insurance companies, third party administrators, brokers, consultants and industry associations. These relationships are essential to establish collaborative partnerships.

- **Key Insurance Companies** - CMGT has established key relationships with several of the largest insurance companies in the industry. These relationships have led to the following clients:

- Their relationship with CIGNA brought the AG&L account.
- Liberty Mutual resulted in the Howard Hughes account



- The Hartford not only has brought the Honda of America, Ball Corp and Platinum Equity accounts, but The Hartford uses the product for all of its 20,000 employees. While these accounts and "lives" are currently using the product, there is a special relationship that exists between Hartford and CMGT. This relationship requires a separate legal due diligence. This is covered under a separate legal due diligence memo.
- Standard Insurance Company, Innovative Care Systems (ICS) and CMGT have teamed up to offer employers an integrated, seamless, FMLA/Absence & Disability Management solution, which has resulted in the eBay and ZiLOG accounts.
- Third Party Administrators (TPA) - CMGT has an existing partnership, announced in March, 2002 with Innovative Care Systems, Inc (ICS). ICS is a wholly owned subsidiary of Keenan & Associates. ICS is a well-known TPA that provides integrated management of Workers comp (WC), STD & LTD, statutory disability (VDI) and FMLA benefits. They have an impressive list of self insured high-tech, WC, VDI and disability clients. This includes a potentially lucrative \$300 million book of California School District WC business. This relationship has led to the eBay and ZiLOG accounts.
- Brokers/Consultants - Sealaska contacted Dawn Darmour, Consultant and Western Region Practice leader for Marsh, Inc.. Marsh, an operating unit of Marsh & McLennan Cos., Inc. (MMC), is the single largest broker consultant in the world. Their subsidiaries include Putnam Investments, Mercer Consulting Group, MMC Capital, Guy Carpenter, Sedgwick Group, Seabury Smith and Johnson & Higgins. Dawn confirmed our findings in regards to the scope of the ADM/FMLA industry and the need for a single source solution for these problems. Dawn is very familiar with CMGT's First-in-Touch platform. She stated that CMGT has the best technology in the industry. Marsh is in the midst of creating a business unit that will target the ADM/FMLA industry and she wants a partnership with CMGT to attract what she sees as an extremely attractive business. CMGT has developed a strong relationship with M Financial Group - a unique nationwide organization of independent insurance, investment, and executive benefit firms serving the financial needs of highly successful individuals and companies (the M Network), M Group is the largest US buying group for large employers



(Fortune 250 companies). Dave Watros, VP of Disability benefits intends to recommend CMGT to his buying group.

- **Industry Associations/Affiliations - CMGT has developed strong relationships with the key ADM industry trade group organizations:**
 - **The Integrated Benefits Institute (IBI) – is a national non-profit research & education organization focusing on the issues surrounding health, disability, productivity. The IBI is interested in a strategic partnership with CMGT to share & co-market absence data to the industry.**
 - **The Washington Business Group On Health (WBGH) – is a non-profit organization exclusively devoted to representing the perspective of large employers & focusing on the nations most important health care & related issues such as health/disability/productivity, related paid time off & work/life balance. The WBGH wants CMGT to join its Council on Employee Health and Productivity (CEHP), formed to address problems & issues facing disability managers and WBGH members on absence and productivity.**

These organizations are eager to have CMGT become a productive member, joining their large insurer, broker, consultant, TPA and other industry organization members.

Competition - CMGT faces the following competition in one form or another for the ADM/FMLA market: Matrix, Core, Gates McDonald, SHPS, Synchrony, THAP, and AETNA. While most of these providers are backed by large financial institutions, CMGT has a distinct advantage in most of the key areas:

- **CMGT is the only company built exclusively for Absence Management/FMLA administration and is recognized as best-of-breed by some of the nations largest insurers, brokers and consultants.**
- **Live operator absence intake - CMGT's First InTouch call center model has been influential in winning existing accounts and receiving the endorsement of industry partners. HHMI chose CMGT due to its call center model. Diane Irving stated that the live operator allows them to keep a**



personal touch with their employees, she did not see this with the voice recognition or web-based intake models.

- **Software Integration** - No single competitor has robust software capable of integration with HRIS, payroll & disability claims management. It is extremely difficult to gather and coordinate data from clients and their insurance providers. CMGT's Absence Expert software integrates all these functions. From our due diligence, the Absence Expert software and integral First InTouch call center processes represent the key advantage over the competition. The software is extremely configurable, is decision-based workflow orientated, is capable of integrating with virtually any system/database, and features flexible 24/7 Web-enabled management reporting. The highly trained call center approach also differentiates CMGT and enhances the complex communication process as well as employee satisfaction.

Industry "Testimonials" - Dawn Darmour from Marsh stated that CMGT has the best technology in the business. This is the firm they want to build their ADM/FMLA business around. Jackson Lewis found that CMGT's Absence Management/FMLA model represented the best platform for their clients. These are testimonials from the world's largest Insurance broker / consulting / risk management firm and the largest Employment Law Firm in the country. In addition, Jim Curcio from the WBGH stated CMGT is a compelling outsourcing solution and is uniquely positioned to address employer absence & disability management and productivity issues because of its superior software and process, cost-effective pricing and results, and strong industry relationships.

Minority & Diversity Supply - Absence Management is an excellent arena to exploit the competitive advantages Sealaska has as a minority-owned, diversity supplier. All government sector employers and all large private sector employers have absence management concerns and all must comply with FMLA. *Yet, there are no minority providers in the industry.* As the only minority provider, CMGT will not only be more attractive to potential clients, but to top level industry partners as well.

While CMGT does face competition in the industry, we feel that CMGT offers superior technology, very competitive pricing and a "best of breed" approach to the ADM/FMLA industry. With the competitive advantages Sealaska's



minority status brings to the table, we feel we can establish a presence as the lead player in an industry with virtually unlimited upside. Employees in the government sector are subject to FMLA. Sealaska's ability to take advantage of sole source contacts opens the gate to literally millions of "lives".

Management -

IT Systems -

Investment Risks and Returns - Of key concern with the investment is the development stage of the business. I think this risk is mitigated by several factors. First, CMGT has been in business for several years. In this time they've managed to attract several Fortune 500 businesses as clients, even with an uncertain financial future. While this is a development stage business, our due diligence has shown that the key industry players view this product as best of breed. The relationships and partnerships they've built, in spite of CMGT's lack of financial strength are impressive and a testimonial to the strength of their product, management and market need.

We have assessed CMGT's revenue and expense projections against this market backdrop and feel they are reasonable. To meet its projections, CMGT needs to service 2.3 million employees by December 2006 – this is roughly 1.5% of the expected U.S. civilian market at that time. Given the above, this seems attainable. The addition of diversity minority status will only help. If CMGT achieves its projections, the potential returns for Sealaska are tremendous and more than balance the risks in my estimation.

Recommendation – Our entire management team agrees with my recommendation that Sealaska complete the proposed investment in CMGT ASAP so that we can immediately begin to address the market from a position of financial strength.