Grochocinski v. Mayer Brown Rowe & Maw LLP et al Doc. 204

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

DAVID GROCHOCINSKI, not individually, but solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of CMGT, INC.	)	
Plaintiff,	)	No. 06 C 5486
v.	)	Judge Virginia M. Kendall
MAYER BROWN ROWE & MAW LLP, RONALD B. GIVEN, and CHARLES W. TRAUTNER,	)	
Defendants.	)	

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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

SUPPLEMENT TO SPEHAR MOTION TO ALTER OR AMEND

This supplement to my April 28, 2010 Motion to Alter or Amend ("Motion to Amend" and "Supplement") is filed contemporaneously with my June 10, 2010 Reply in Support of the Intervention Motion ("Reply") so that, should this Court grant the Intervention Motion, Defendants and this Court will have ample opportunity and sufficient time to fully consider its arguments and evidence before Defendants must respond to the Motion to Amend. Additionally, both it and the Motion to Amend are incorporated in the Reply in order to answer certain of Defendants' arguments.

First, as this Court has noted, this is a very unusual case. Moreover, its complex set of underlying facts is (a) now seven years old, (b) confusingly spread over four years of pleadings by three different parties or movants (including Spehar) in several different actions before three different Courts (this Court, the bankruptcy Court, and District Judge Gettleman on appeal), (c) still incomplete in those pleadings, and (d) has, naturally, been

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expertly confused by Defendants' self-serving spin. Therefore, this Supplement first offers a Consolidated Chronology of Key Events ("Chronology") to, hopefully, provide this Court a useful tracking and overview device, as well as a comprehensive counter to Defendants' factual misrepresentations. Unless otherwise noted, the new evidence presented in the Exhibits hereto was taken from Defendants' email record that was produced to Grochocinski for his pre-Complaint investigation.

An overarching point that I ask this Court to keep in mind as it considers the Chronology is this: If I truly was/am the "puppet-master" that this Court believes me to be, then why is this Court now seeing the substantial new evidence and argument in the Supplement and the Motion to Amend for the first time? In fact, if I had anywhere near the absolute control over Grochocinski, Joyce and this malpractice case that this Court found I did, (a) this case would have been pled as **intentional fraud** from day one and (b) every bit of the evidence and argument herein, and in the Motion to Amend, would have been years ago before this Court. Why was it not? Only because Grochocinski and Joyce are anything but my puppets, and **they controlled** the investigation and litigation of this case, not me.

Second, the Motion to Amend (at ppg. 35-40) correctly argues that the 2010 Opinion's pivotal "inconsistent positions" finding is wrong because, under the particular facts of this case, Illinois law (*Tri G*) does not require Grochocinki to litigate the case-within-a-case (or address merit) and, therefore, Grochocinski need not advocate a position in this malpractice action (SC does not have merit) that is contrary to SC's position in its 2003-2004 California litigation (SC does have merit).

In addition to that valid (but specific to Illinois law) argument, the Supplement also offers five broad policy arguments that strongly militate against establishing legal precedent based on the erroneous "inconsistent positions" finding and this Court's application of judicial estoppel based thereon:

- There is no actual identity of parties and thus no possibility of inconsistent positions as required for judicial estoppel,
- The inconsistent positions finding directly attacks a litigant's right to freely allocate proceeds,
- Defendants admit proximate causation, therefore Grochocinski need not litigate the case-within-a-case,
- The "sword and shield" doctrine bars Defendants inconsistent positions argument, and
- The "clean hands" doctrine and Laches also bar Defendants inconsistent positions argument.

I. CONSOLIDATED CHRONOLOGY OF KEY EVENTS IN THE SC-CMGT DISPUTE AND THE CALIFORNIA LITIGATION

1. In or about January 2003, major CMGT, Inc. ("CMGT") shareholder Chuck Trautner ("Trautner"") first proposes his Newco deal ("Newco") to CMGT President Lou Franco ("Franco") and Spehar Capital, LLC ("SC") President Gerry Spehar ("Spehar"). Under the Newco deal, CMGT shareholders retain **20%** of CMGT, and CMGT's creditors are **not paid**. (Cmplt. at 40; Mo. to Amd., Ex. 1, Spehar Aff. at 4.)

2. On January 23, 2003, at Franco's request, Spehar speaks with Newco principal investor Harlan Smith ("Smith") and sends Smith a CMGT Non Disclosure Agreement ("NDA") and CMGT investment package. (Sp. Aff. at 5-6; Pltf. 56.1 Stmt., Ex. 6, Doc. 153-2 at 53)

Note: This Franco-approved contact and exchange of CMGT investment information **indisputably** places Smith (thus Newco, with Smith involved) under SC's contract, if/when CMGT "accepts" Newco funding. (SC-CMGT Contract, Cmplt. Ex 2 at 3 "Compensation")

3. On January 27, 2003, Franco, Trautner, Spehar and Defendant Ronald Given ("Given") participate in a conference call to vet the Newco deal. Shortly after that call, Franco **rejects** Newco as not in the best interest of CMGT shareholders and creditors. (Sp. Aff. at 7; Pltf. 56.1 Stmt. at 4 and Exs. 6 and 7; Cmplt. at 40)

Note: Because Franco **rejected** Newco, Newco funding did not qualify as "Accepted Capital" per SC's contract. Therefore Spehar did not demand that Trautner and Smith be added to Exhibit A of SC's contract at this time.

4. On April 8, 2003, Franco, Spehar and CMGT shareholders Wayne Baliga ("Baliga") and James Wong ("Wong") form Millennium Partnership ("MP") to raise $100 million to jointly fund a Minority Owned Insurance Company ("MOIC") and CMGT. Defendants are MP's counsel (as well as CMGT's counsel). Under the MOIC/CMGT deal, CMGT shareholders keep **49%** of CMGT and CMGT creditors are **made whole**. (Sp. Aff. at 8; Cmplt. at 30-31; Pltf. 56.1 Stmt. at Exs. 8, 15 and 30)

Question: SC's sole role in MP was to raise $100 million to fund both MOIC and CMGT. If SC was incapable as a fundraiser, as Defendants' maintain (Def. Nov. 30, 2006 Mo. to Dismiss at 4)[1], why did Franco, Wong and Baliga enter into MP

[1] "After more than two years of effort, Spehar failed to place any financing for CMGT." (Def. Mo. to Dis. Memo at 4)

See Preiss Affidavit, Ex. 4 to Spehar June 10, 2010 Reply to Mo. Intervene, at ¶¶20-24 re Spehar/CMGT and the very difficult venture capital market in 2001 – 2003.

with SC at this late date (with Defendants as counsel) to raise such a substantial sum?

5. On May 1, 2003, after four months of extensive due diligence (Mo. to Amd., Ex 2; Cmplt. at 34-36) Sealaska Corporation ("Sealaska"), a powerful Alaskan Native Corporation ("ANC") minority/diversity investor (Ex. 1 hereto)[2] introduced and secured by SC (Cmplt. at 33), submits a roughly $1 million Term Sheet for 51% of CMGT.[3] (Ex. 2 hereto) Over the next week, Franco and Given (without Spehar)[4] negotiate with Sealaska but fail to come to terms. (Ex. 3 hereto;[5] Cmptl. at 37)

6. On May 7, 2003, Franco **rejects** Sealaska's Term Sheet (Ex. 4 hereto) and, **unbeknownst to Spehar** (Sp. Aff. at 10), Given and Franco **revive Newco** with Trautner. (Cmplt. at 38;[6] Def. Mo. to Dismiss at 4;[7] Ex. 5 hereto)[8] The revived Newco is the same deal that Franco rejected in January 2003 as not in CMGT's best interest (Cmplt. at 41) and **Smith remains** Newco's principal investor (*See* ¶11 below; Sp. Aff at 11-12). Yet, Newco and CMGT refuse to honor SC's contract. (Cmplt. Ex. 3 at ¶8)

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[2] In 2008, Sealaska Corp. experienced $40.9 million in unrealized non-cash investment losses on its investment portfolio due to the economic/market downturn, but still maintained strong liquidity, a $68 million Permanent Fund, had $126 million in revenue, $334 million in assets, $225 million in shareholders' equity, and invested in several new companies. *See* full Sealaska description at http://www.sealaska.com.

[3] Thus, Defendants misrepresent in stating "After more than two years of effort, Spehar failed to place **any** financing for CMGT." (Def. Mo. Sum. J. Memo at 5, *Emphasis added.*)

[4] *See* Exs. 3 and 6 hereto.

[5] Exs. 3, 8 and 9 hereto were taken from Spehar's email record. Exs. 3 and 8 were sent to Spehar by Franco.

[6] "While CMGT was negotiating with Sealaska in 2003, CMGT was also discussing potential deals with other prospective investors. One of those prospective investors was a group headed by Trautner." *Emphasis added.*)

[7] "In May, 2003, Charles Trautner, a CMGT shareholder, proposed that CMGT contribute its assets to 'Newco' ... in exchange for $500,000 or 20% of Newco's stock." (Def. Mo. to Dis. at 4, *Emphasis added*)

[8] Defendant Given's original "Chuck" email to which Franco here responds is **missing** from Defendants' email record that Defendants produced to Grochocinski for his pre-Complaint investigation.

Question: Why did Given and Franco keep **only** the revived Newco deal secret from Spehar when all other funding communications at this time were shared with Spehar?[9]

Answer: Given and Franco **knew** that SC had a meritorious contract claim to Newco (*See* ¶11 below) that Trautner did not want to honor.

7. Also on May 7, 2003, Franco emails Given that **Sealaska is asking** "in an unusually positive way" that Franco and Given "**try one more time** to strike a deal." (Ex. 5 hereto at 1, *Emphasis added*).

8. On May 8, 2003 Franco and Given again negotiate with Sealaska (Ex. 6 hereto), but continue to reject Sealaska's Term Sheet.

9. On May 13, 2003, Sealaska **terminates** negotiations with CMGT. (Ex. 7 hereto)

10. Sealaska's Term Sheet is essentially the financial **equivalent** of Newco's July 30, 2003 Letter of Intent ("LOI"),[10] Sealaska is a much more powerful business partner

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[9] *See* Exs. 2-4 and 6-8 hereto. To my knowledge, at this time **all** other emails between Franco and Given pertaining to the Sealaska deal and/or other investors were cc'd to Spehar. **Only** the "Chuck" emails (Ex. 5 hereto) were kept secret from Spehar.

[10] Sealaska would have invested under Newco's terms, if offered before Sealaska walked away:

- For **80%** of CMGT Newco was paying $2.5 million, thus it was paying **$31,250** per percent of CMGT ($2.5 million divided by 80).
- For **51%** of CMGT Sealaska was paying *at least* $1,294,250, thus it was paying *at least* **$25,377** per percent of CMGT ($1,294,250 divided by 51) – or close to Newco's cost. Sealaska's Term Sheet contemplated investing:
  - $950,000 cash, *plus*
  - $344,250 for 51% of CMGT's $675,000 "Existing Obligations" (Ex. 2 hereto at 7, "Ex. A"), *plus*
  - Additional "Advances in excess of $950,000" (Ex. 2 hereto at 3, "First Priority.").
- *Ostensibly*, Franco rejected Sealaska because Hartford wanted an investor to commit at least **$2mm** to CMGT, and Franco did not want to lose Hartford as a CMGT business partner (Ex 8 hereto at 2, ¶2). However:
  - Newco's **$2.5mm** investment *exceeded* Hartford's **$2mm** threshold,
  - Owning **80%** of CMGT rather that **51%** would have been very attractive to Sealaska,

(minority diversity, financially, established connections) than Newco (Exs. 1 and 8 hereto;[11] Mo. to Amend, Ex. 2) and, unlike Newco, Sealaska will **honor** SC's contract. (Ex. 8 hereto at 3, ¶2)[12]

> **Question**: **Knowing** that SC had a meritorious contract claim to Newco and would likely sue CMGT over Newco, why did Franco and Given **secretly** pursue the revived Newco deal instead of either (a) simply accepting an **equivalent** and **dispute-free** deal with a much more powerful business partner (Sealaska)[13] or (b) offering Newco's terms to Sealaska?

11. On July 29, 2003, Franco emails Given regarding the revived Newco deal: "Harlan [Smith] already signed a NDA in January 2003...**with Gerry Spehar in the loop.**" (Sp. Aff at 11-12 and Ex. D; Pltf. 56.1 Stmt. at ¶5 and Ex. 8, *Emphasis added*)

12. On July 30, 2003, Given provides Franco with a final LOI for the revived Newco deal, which Franco signs and sends to Trautner. Thanking Given, Franco also sends both Trautner and Smith **redundant** NDAs to sign and **redundant** CMGT investment packages. (Sp. Aff at ¶12 and Ex. D)

- Considering Sealaska's huge upside *and* reduced risk relative to Newco, it was in CMGT's best interest to offer Sealaska **80%** of CMGT for only **$2mm** (i.e., **$25,000** per % of CMGT or *less than* Sealaska's Term Sheet paid) to **ensure *both*** Sealaska and Hartford as partners.

[11] Patrick Duke, Sealaska Treasurer and Corporate Investment Officer: "We feel EXTREMELY confident that the Hartford and others will see the benefit that CMGT now offers, especially with the minority advantage/federal procurement that Sealaska brings to the table. ... I'd like to see the Hartford turn their back on a company with our connections on the hill. ... If you have any doubts, just wait until you see Sealaska crank up the heat on the Federal side, this is what we do best and better than any company in the country. ... We are all committed to making this work and it will." (*Emphasis original*)

[12] "On the subject of Gary [sic], Sealaska will pay the 6% of funding he is owed on the $950K. This is a contract that you entered into with him and we will honor that."

[13] Additionally, Newco's Letter Of Intent was still subject to due diligence. Sealaska's Term Sheet was Management and Board-approved after extensive due diligence. (*See* Sealaska Due Diligence Report, Ex. 2 to Spehar Mo. to Amend.)

Question: After (a) secretly emailing each other "Re Chuck" (¶6 above) and then (b) secretly acknowledging to each other that "Gerry Spehar [is] in the loop" with Smith/Newco, why did Franco and Given then (c) secretly send Smith and Trautner redundant NDAs to sign and redundant CMGT investment packages and then later (d) Given state to Spehar:

> "I have kept **a separate channel** of communication on behalf of CMGT with Chuck. The [Newco] LOI is a **consequence of those separate and distinct** communications. In the course of formulating the LOI, Chuck and I have never discussed any of the prior communications to which you refer (and some of which I also participated in). Lou did not initiate or orchestrate the LOI. On the contrary, Lou's input prior to yesterday's circulation has primarily been in a fine tuning of the proposal; for example, making sure that CMGT can continue with your current prospects." (Cmplt. at 48 and Ex. 9, *Emphasis added*)

Answer: This pattern of secrecy and duplicity clearly indicates (a) conspiracy/collusion between Franco and Given with intent to breach SC's contract and (b) that from the outset of this Dispute, Franco and Given knew beyond doubt that SC's contract claim to the revived Newco deal was meritorious. Thus, Defendants have since *always* intentionally misrepresented to shareholders, SC and this Court when claiming SC's contract claim to Newco is "meritless," with "no substantive basis" and even "spurious." (Cmplt. at 55, 60 and Ex. 16) Even now, with this indisputable contradictory evidence before them,[14] Defendants *still* continue to misrepresent the merit of SC's contract claim to this Court. This is brazen (and sanctionable)[15] fraud, not negligence.

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[14] Pltf. 56.1 Stmt. at 5 and Ex. 8.

[15] In Defendants' own words: "[This] demonstrates a remarkable lack of respect for this Court and recklessness or gross indifference to the integrity of the judicial system as a whole. [It is] an attack on the integrity of the judicial system and...a blatant attempt to pervert the judicial process. The fact that [Defendants' counsel Novack] -- as an officer of the Court -- was willing to go along with the scheme in

Question: Why would Franco and Given have done all of this?

Answer: More certain and quicker personal payment. *See* Cmplt. at 37, 42-43 and Ex. 3; Pltf. 56.1 Stmt. at 17, 21, 48, 29-30, 60 and Ex 74. *Compare to* Ex. 2 hereto at 2-3, "Phase 1" re: Franco and "Phase 3" and "Third Priority" re: Defendants.

13. On August 1, 2003, Franco, Baliga, Wong, Spehar and Given meet with Council Tree Communications ("CT") and Madison Dearborn Partners ("Madison") for over two hours in Defendant's Chicago offices to seek $100 million funding for the MOIC/CMGT deal. No one tells Spehar or CT/Madison that CMGT has **already** signed the revived Newco LOI and thus committed to the Newco deal. (Sp. Aff. at 13-15) Subsequent to this meeting, CT/Madison **pursues** the MOIC/CMGT deal. (Ex. 9 hereto)

14. On August 7, 2003, in a letter **co-drafted by Given**, Franco for the first time informs CMGT shareholders of the Newco LOI and states: "[T]his is a deal we should and must do. **There are no alternatives.**" That same day, Franco also for the first time informs SC that Newco has been revived. (Cmplt. at 44; Pltf. 56.1 Stmt. at 9, *Emphasis added*)

15. On August 8, 2003, now knowing that Newco has been accepted by CMGT, SC strongly asserts its contract claim to Franco. SC bases its claim only on Trautner because it does not know that Smith remains a principal Newco investor. **Given answers for**

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the hopes of...earning a...fee is more than enough to show recklessness or, at the very least, an utter indifference toward this Court and the judicial system as a whole.

[E]ven assuming [Novack] did not understand the full extent of the scam when the Complaint was filed -- the fact remains that [Novack] persisted...even after [Plaintiff] brought the scam to light in [his July 13, 2010 Response to] Defendants' summary judgment motion... At [that] point, any objectively reasonable and careful attorney would have backed down... Here, however, [Novack] did just the opposite..." (Def. Apr. 29, 2010 Mo. for Sanctions at 12-13)

Franco and states that he (Given) is responsible for Newco and that all communications regarding Newco should go to him (Given), not Franco. (Cmplt. at 47-49; Sp. Aff. at 3)

16. On August 9, 2003, Given emails Spehar: "If you wish to pursue [Newco], you...should deal with us **through counsel.** You have the right to do that, of course, but if you do I believe all your activities on behalf of CMGT should cease (as well as your MOIC involvement)." (Cmplt. at 49-50 and Ex. 11, *Emphasis added*)

> **Note:** In other words, Defendant Given, who is both CMGT's counsel *and* Spehar's MP/MOIC counsel, advises *his client* Spehar to retain counsel v. *his client* CMGT, but then also threatens *his client* Spehar with the loss of both CMGT and MOIC if he does. (Cmplt. at 49)

17. On August 13, 2003, Franco asks Given to pre-approve a $2.5 million LOI for the Washoe Tribe, another minority/diversity investor that SC has secured. As with the MOIC/CT-Madison deal, CMGT shareholders keep **49%** and CMGT creditors are made **whole.** Franco emails Given: "**I believe the interest is real** and that we should provide [the Washoe] a suggested LOI..." (Cmplt. at 44; Pltf. 56.1 Stmt. at 18 and Ex. 21, *Emphasis added*)

18. On August 14, 2003, Franco then emails Spehar: "I don't want to set the bar down as low as the Newco LOI & encourage a similar offer from the Tribe. ... **I sense the Tribe has an appetite for a much better deal for CMGT,** and your draft LOI leaves the door open for us to negotiate quite a bit more." That same day, Given approves the $2.5 million Washoe Tribe LOI and Franco instructs SC to send the approved LOI to the Washoe, which SC does. (Cmplt. at 44; Pltf. 56.1 Stmt. at 19-20 and Ex. 23, *Emphasis added*)

19. On August 15, 2003, in a letter **co-drafted by Given**, Franco asks CMGT shareholders to vote (over the next week) to approve the Newco deal. Franco again attaches his August 7, 2003 letter that states "**There are no alternatives.**" At this time, Franco does **not** disclose to shareholders that: (a) SC has a meritorious contract claim to Newco because of Smith, (b) Given has advised SC to seek counsel v CMGT if it wishes to pursue that claim, (c) SC has strongly stated that it will pursue its contract claim if CMGT does the Newco deal without paying SC, and (d) both the Washoe and CT-Madison are also currently pursuing a CMGT deal under much **better terms** for CMGT. (Cmplt. at 44; Pltf. 56.1 Stmt. at 22 and Ex. 26)

Questions: Why did Franco and Given not timely disclose these material facts to shareholders? Had these material facts been properly disclosed to shareholders **before** voting on Newco, would they still have approved Newco or chosen to pursue either the Washoe or MOIC/CT-Madison deal?

20. On August 19, 2003, at Spehar's insistence, Given, Franco and Spehar hold a "settlement" call on which Given immediately calls Spehar a "Motherfucker" and "Son of a Bitch" who knows no one but a "bunch of Mexicans and Indians" and threatens to "make you (Spehar) poor." (Sp. Aff. at 23-25; Susan Spehar Aff.; Pltf. 56.1 Stmt. at 23-25 and Ex. 30)

Given then emails Spehar (cc'd to Franco) to threaten: "**[Y]our claim is without merit**... Lou and I are not preventing you from directly dealing with [Trautner]. ... I believe from a legal point of view this will set you up for **claims against you by the CMGT investors**..." (Pltf. 56.1 Stmt. at 24, *Emphasis added*)

Note: Under Given's legal threat, SC could not contact CMGT shareholders. Thus, Franco and Given remained their sole source of information.

21. On August 22, 2003, while CMGT shareholders are still voting to approve Newco at Franco and Given's request, **Given secretly solicits a $100,000 payment from CMGT's counterparty** Trautner/Newco and advises:

> "Interestingly enough, [Spehar] may have actually improved the deal from Newco's perspective...you could walk away with the software and, most importantly, Lou Franco **without making any payment to CMGT whatsoever.**"
>
> (Pltf. 56.1 Stmt. at 28-29 and Ex. 34, *Emphasis added*)

22. On August 27, 2003, in a letter **drafted by Given**, Franco notifies CMGT shareholders that they have approved the Newco deal. Franco then, for the first time, tells shareholders that SC disputes the Newco deal, claiming it is entitled to compensation. **Knowing** that SC's claim is **indisputably** valid because of Smith's Newco involvement, Franco nevertheless states "your management and its legal counsel strongly disagree with this contention." Franco *still* does not tell shareholders that two **dispute-free** deals with **much better terms** are also on the table for CMGT (the Washoe and MOIC/CT-Madison). (Pltf. 56.1 Stmt. at 31 and Ex. 36)

Note: At no time after January 2003 have Defendants or Franco ever mentioned Smith's Newco involvement to me or, to my knowledge, any of CMGT's shareholders or this Court. (Sp. Aff. at 3 and 20-21)

23. On August 29, 2003, in an email to SC, the Washoe confirm "**[w]e are very interested in this [CMGT] opportunity**...I will commit to you to have a signed LOI on Tuesday September 2 if not sooner." SC immediately forwards this email commitment to Franco. (Cmplt. at 45; Pltf. 56.1 Stmt. at 32 and Ex. 38, *Emphasis added*)

24. On September 1, 2003, Franco sends Given a draft summary of CMGT's corporate liabilities for his review, which Given does not revise before Franco sends it to Newco the next day. With respect to SC's contract dispute, the summary states, "all **issues subject to legal opinion of Mayer Brown Rowe & Maw (legal counsel for CMGT, Inc.),**" "meritless claim," "[n]o legal action required," "[l]ikelihood of settlement is high if legal action is taken against CMGT," "**MBR&M and Management agree there is no basis for a claim,**" "**G. Spehar has indicated he will take legal action** to enforce his contract based on his previous introductions to/discussions with Chuck Trautner & various investors," degree of risk is "high," **and no curative action is required**. (Pltf. 56.1 Stmt. at 35-36 and Ex 42-43; Cmplt. at 57 and Ex. 14, *Emphasis added*)

25. On September 2, 2003, as promised the **Washoe deliver an LOI** to CMGT on their letterhead. The LOI is unsigned because the Washoe ask CMGT to first review, approve and sign off on their few non-material changes to CMGT's pre-approved LOI, and then return it for their Chairman's immediate signature. Because time is short and the Washoe's LOI modifications are immaterial, SC strongly advises Franco to quickly sign and return the Washoe LOI as is. (Cmplt. at 45; Pltf. 56.1 Stmt. at 37-38)

26. On September 3, 2003, over SC's strong objections, **Given materially modifies** the Washoe LOI terms that he had just **pre-approved** on August 14th such that SC warns Franco that Given's modified LOI will now be unacceptable to the Washoe and they will reject it and withdraw their interest. (Pltf. 56.1 Stmt. at 39-41; Cmplt. at 46)

27. On September 4, 2003, over SC's strong objections, Franco instructs SC to present Given's modified LOI terms to the Washoe. As SC had warned, the Washoe now reject the Given-modified LOI. (Cmplt. at 46; Pltf. 56.1 Stmt. at 37-38)

28. On September 5, 2003, per Franco's instructions, SC arranges a phone conference for Given to negotiate directly with the Washoe. On that call, Given refuses to (a) change the most problematic of his modified LOI terms or (b) offer Newco's terms to the Washoe, and the Washoe terminate their negotiations with CMGT. (Pltf. 56.1 Stmt. at 43)

> **Question:** After expressly acknowledging just days earlier "G. Spehar has indicated he will take legal action to enforce his contract [against Newco]," (a) why didn't Franco simply sign the Washoe LOI that was essentially CMGT's pre-approved LOI *or* (b) why didn't Given back-off of his problematic LOI modifications *or* offer Newco's better terms to the Washoe and avoid SC's expected legal action?

29. On September 9 and 11, 2003, SC duly notices both Franco and Given of hearings in California at which SC will be seeking a TRO to enjoin the Newco deal ("California Action"). (Pltf. 56.1 Stmt. at 44)

30. On September 12, 2003, **Defendants do not appear** to defend CMGT, and SC is granted an **uncontested** TRO in California. (Cmplt. at 59; Pltf. 56.1 Stmt. at 44)

> **Note:** SC California counsel Ken Franklin's sworn October 2007 Declaration is Ex. J to the Spehar Aff. (Mo. to Amend, Ex 1). In it, Franklin details his many direct interactions with Defendant Given leading up to and during the TRO and preliminary injunction ("PI") proceedings in California in September and October 2003. Franklin declares:

> "After speaking with Mr. Given, I believed that he and Mayer Brown were **acting as CMGT's counsel regarding this matter**. ... I was never informed by [CMGT], or by Mr. Given or any other attorney at Mayer Brown that Mayer Brown did not represent CMGT in connection with the [SC] Litigation. To the contrary, based upon Mr. Given's representations, I believed that Mayer Brown had simply chosen an alternate forum and decided to contest in Chicago the [TRO], the [PI], and any other orders issued by the California Court."
>
> (Mo. to Amd. at 13-14 and Sp. Aff., Ex. J, *Emphasis added*)

31. On September 14, 2003, Given writes Trautner counsel John Politan ("Politan") a lengthy memo detailing his "nine point plan" to **blame Spehar** for Newco's demise and do a "functional equivalent" side-deal that benefits Franco, Trautner and other CMGT insiders, but entirely **excludes** and disenfranchises CMGT's non-insider minority shareholders and creditors. Given also threatens to stop advising Newco unless he receives a payment letter agreement (drafted by Given) and an immediate **$50,000 payment** from Politan. (Pltf. 56.1 Stmt. at 46-50 and Ex. 62)

32. On September 17, 2003, implementing his "nine point plan" (*see* point 3) to strip CMGT's business and assets from non-insider shareholders, Given sends SC's TRO (with which he was served on September 16, 2003) to CMGT's shareholders and Spehar and states "Mayer Brown has not been retained to deal with this matter, and we do not expect to be." (*Id.*. at 53-54; Cmplt. at 60.)

33. On September 18, 2003, Franco sends Given SC's TRO as domesticated in Illinois, and tells Given "I'll talk with you in the AM about [SC's TRO]." (Pltf. 56.1 Stmt. at 55)

34. On September 19, 2003, Given continues with points 1, 3 and 4 of his "nine point plan," sending CMGT's shareholders and Spehar an email, stating: (a) as a result of SC's TRO, Franco has advised Given that he must now plan to leave his position with CMGT and pursue other opportunities, (b) representatives of Newco have indicated that they

intend to terminate the LOI in short order, (c) SC's claim is "absolutely spurious" and its request for injunctive relief is "clearly inappropriate," (d) CMGT has no money to fight this battle, and (e) Franco and Given are going to "work on" the issue of CMGT not breaching its client contracts. Given then invites CMGT's shareholders to call him with questions about SC's lawsuit, but says nothing about the "functional equivalent" deal. (*Id.* at 56 and Ex. 68.)

Note: Defendants had a clear duty to defend CMGT in the California Action:

a. With respect to Given's September 19, 2003 email, this Court has stated:

> "Exhibit 16 to the Complaint is an email from Given to Franco and others providing an assessment of the Spehar litigation and the 'Purported Spehar TRO.' That email instructs the recipients to '[f]eel free to contact [Franco] or me with any questions . . . you might have regarding the current situation.' That the Lawyer Defendants advised CMGT with respect to the dispute with Spehar ... suggests that **an attorney-client relationship arose** between the Lawyer Defendants and CMGT with respect to the Spehar dispute and a concomitant duty of care on the part of the Lawyer Defendants."
>
> (June 28, 2007 Op. at 14, *Emphasis added*);

b. *See* Franklin's Oct. 2007 Declaration (¶30 herein and Ex J to Spehar Aff.);

c. At every step of the Dispute *and* the California Action, Franco/CMGT sought, received and followed Defendant Given's advice with respect to the Dispute and the California Action:

- *See* ¶¶3-20, 24, 28, 33, 38, 39, 45-50, 52 and 54-56 herein
- During his May 7, 2004 citation deposition, Franco stated, "**[w]e could not set foot -- couldn't set foot in a California Court for legal reasons, and Ron [Given] can explain that**..." (Pltf. 56.1 Stmt. at 52, *Emphasis added*)

35. Shareholders are **not** asked to contribute money to defend CMGT and are **not** told about Given's "nine point plan" and "functional equivalent deal." (Pltf. 56.1 Stmt. at 58)

36. SC continues to seek a settlement:

- On September 19, 2003, SC's attorney Klenda responds to Given's September 19 email states "Spehar Capital was forced to rely on the legal process to preserve its rights because CMGT and its counsel refused to substantively address Spehar Capital's claims, even though it knew of Spehar Capital's position and the potential for legal action." Klenda then says there are many ways that CMGT could still close the Trautner Deal while protecting SC's rights, but that instead of pursuing those options, CMGT decided to "just pull the plug." (*Id.* at 57)
- On September 20, 2003, Baliga sends an email to Spehar, Franco and Wong. Baliga encouraging them to settle SC's dispute. Spehar responds that he remains willing to talk about solutions and Franco forwards that email exchange to Given. (*Id.* at 59)

37. On September 21, 2003, pursuant to Given's prior demands (*see* ¶¶21 and 31 herein), Newco/Politan sends Given the payment agreement letter that was **drafted by Given** (*Id.* at 46) and **pays Mayer Brown $50,000**. Newco has **not yet terminated** its LOI with CMGT. (*Id.* at 60)

38. On September 22, 2003, Franco sends Given Newco's September 20, 2003 "to do" lists for Given and others. Given's "to do" list concludes: "This list is not complete as you have a number of items to accomplish and complete relative to your Sept. 14th memorandum..." This refers to Given's September 14, 2003 "nine point plan" for the

secret "functional equivalent" side deal (*see* ¶31 herein). These "to do" lists also reveal that Wong knows about and is participating in Given's side deal. Newco still has **not terminated** its LOI with CMGT. (*Id.* at 61 and Ex. 75)

39. On October 1, 2003, Franco sends Given a notice from the DuPage County Clerk that a decree/judgment had been entered against CMGT and in favor of SC. Franco asks Given, "[d]o we need/want to do anything in DuPage County?" (*Id.* at 62 and Ex. 76)

40. On October 2, 2003, in accordance with his nine point strategy to "walk away with the software and, most importantly, Lou Franco without making any payment to CMGT whatsoever" and lay the blame on SC (¶¶21 and 31 herein), Given informs CMGT shareholders that Newco has **now terminated its LOI** because SC has not withdrawn its California Action. Given also advises shareholders **"The subject matter of Gerry Spehar's lawsuit no longer exists."** (*Id.* at 63 and Ex. 77; Cmplt. at 61, *Emphasis added*)

Note: This advice may have been read by shareholders as Defendants advising them that no one need appear to defend CMGT.

41. On October 3, 2003, **Defendants do not appear** at the duly-noticed PI hearing in California to defend CMGT, and SC is granted an **uncontested** PI. (Cmplt. at 62)

Note: Defendants admit:

> "[If] CMGT had defended itself, it would have won the preliminary injunction hearing and would have closed the Newco Deal."
>
> (Def. Feb. 7, 2007 Reply at 19, *Emphasis added*)

That same day, SC's attorney Klenda notifies CMGT shareholders of SC's PI and states: "Instead of dwelling on such differences, SC would rather join [CMGT's]

investors in trying to salvage a deal that works for all parties." (Cmplt. at 63; Pltf. 56.1 Stmt. at 64 and Ex. 78.)

42. On October 3, 2003, Franco sends Given a typed version of Newco's September 20, 2003 "to do" lists. (*Id.* at 65)

> **Note:** Since Newco has now officially **terminated** its LOI with CMGT, these "to do" lists are **necessarily** sent to further Given's "functional equivalent" side deal.

43. On October 4, 2003, unaware of Given's secret side deal, Spehar sends an email to Franco, Given and Baliga and again tries to settle the Dispute. Spehar asks Franco for the Trautner investment group's contact information so that he can try to (a) bring them back to the table, and (b) resolve SC's contract dispute. (*Id.* at 66 and Ex. 80.) Franco then forwards Spehar's October 4, 2003 email to Newco and states, **"Ron [Given] and I discussed this and we are not replying to Gerry's email as it is not necessary."** (*Id.* and Ex. 81, *Emphasis added*)

44. Throughout October 2003, Defendants and Franco continue to implement their secret side deal that strips CMGT's operating business and assets from its shareholders and transfers them to Newco and a select group of CMGT insiders "without making any payment to CMGT whatsoever." (*Id.* at 67-69 and ¶21 herein)[16]

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[16] At trial on Nov. 25, 2008, Franco testified: "Q. Is it your testimony that you resigned as [CMGT] president and CEO in [September 2003]? A. Yes, because I took a job in October. Maybe it was November. Q. Where did you take a job? A. It was a company in California."

See Rcrd. of Apl. *In re CMGT, Inc.*, No. 09 C 2822, 2010 WL 432276, at *5 (N.D.Ill. Feb. 2, 2010) (Gettleman, J.). Franco 11/25/08 testimony, Doc. 3-11 at 40.

Presumably, that California company was Innovative Care Systems ("ICS"), a subsidiary of Keenan & Associates ("Keenan") and a former CMGT business partner. Keenan was a participant in Given and Franco's "functional equivalent deal." (*See* Pltf. 56.1 Stmt. at 68) CMGT EVP and software developer Robert Crandall also went to work for Keenan/ICS. (Ex. 10 hereto)

45. On November 28, 2003, SC serves Franco/CMGT with its First Amended Complaint that, for the first time, seeks $17 million in damages, and Franco sends Given an email attaching a copy of SC's amended complaint. Franco tells Given that he wants to discuss the amended complaint and "what Gerry & his lawyers are up to." Given responds the next day and states, "I have it. We'll talk later." (*Id.* at 70 and Exs. 85-86)

46. On November 30, 2003, Franco sends Given additional documents from the California Action so that they can discuss them. (*Id.* and Ex. 87)

47. In December, 2003, responding to SC's First Amended Complaint, Given and Franco, apparently in concert with Wong and Baliga, discuss, prepare and file knowingly **bogus** UCC-1 statements for CMGT **equity** holders. (*See* ¶¶48-50 below.)

> **Note:** This was another fraud on shareholders. Presumably, the UCC-1s were filed to perfect/secure shareholders' investments and establish priority over SC before SC obtained its judgment and became a $17 million secured creditor of CMGT. However, (a) as Given, Franco, Wong (a CPA and forensic accountant) and Baliga (a non-practicing CPA and attorney) knew or should have known, UCC-1 statements can only perfect/secure debt, not equity investments, and all CMGT shareholders who voted on the Newco deal (or any other deal) had already converted their investment to equity by virtue of voting, and (b) Franco later twice testified under oath (on May 7, 2004 at his Citation to Discover Assets examination, and again at trial on November 25, 2008) that he had resigned from CMGT months **before** signing a critical "Security Agreement" without which the UCC-1 statements were invalid in any case.[17]

[17] *See* Rcrd. of Apl. *In re CMGT, Inc.*, No. 09 C 2822, 2010 WL 432276, at *5 (N.D.Ill. Feb. 2, 2010) (Gettleman, J.) Doc. 3-2 at 19-20 (signed Security Agreement); Doc. 3-3 at 10-12 (SC letter to

Question: Instead of filing bogus UCCs that they knew or should have known would definitely not protect shareholders' investments, why didn't Given and Franco simply either (a) file a CMGT bankruptcy to automatically stay SC's California Action or (b) appear to defend CMGT against SC's default judgment?

48. On December 1, 2003, Franco signs the Security Agreement that supposedly supports the shareholder UCC-1s as "President, CMGT, Inc.," even though he later twice testifies under oath that he had resigned his CMGT positions as of September, 2003. (*See* FN 17, esp. Doc. 3-2 at 19-20 and Franco testimony) **Given drafted** that Security Agreement for Franco to sign. (Ex. 11 hereto)

49. On December 15, 2003, in an email entitled "Gerry Spehar lawsuit against CMGT," Franco sends legal papers from the California Action to Baliga, Wong and Given. Given responds asking Franco "would you send me the names of the **shareholders** and known creditors." Franco then responds, cc'd to Wong, that he has already "sent the investor/**shareholder** listings via my previous email. **I'll confirm with Jim Wong** 1st thing in the AM re: list of know creditors so we can itemize shareholder and non-shareholder noteholders...& amounts involved and advise you." (Ex. 12 hereto, *Emphasis added*)

50. On December 31, 2003: In an email entitled "UCC Filing Schedule" Given's secretary sends Franco verification that Defendants have filed the UCC-1s in Delaware (on December 17, 2003) and in Illinois (on December 18, 2003). (Ex. 13 hereto)

51. On January 12, 2004, Franco sends Given and Wong an email regarding SC's request for a default judgment. Franco states that he will call Given to discuss SC's

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Grochocinski explaining why the UCCs are invalid); and Doc. 3-11 at 36-40 and 51-53 (Franco 11/25/08 testimony re: his resignation and the Security Agreement). *See also* ¶56 herein and Pltf. 56.1 Stmt. at 73.

request. Given tells Franco to call anytime after noon on January 15. (Pltf. 56.1 Stmt. at 71 and Ex. 88-89)

52. On January 30, 2004, Franco sends Given an email regarding the status of SC's lawsuit. (*Id.* and Ex. 90.)

53. On February 26, 2004, **Defendants do not appear** at the duly-noticed Prove Up hearing in California to defend CMGT, and SC is granted an **uncontested** $17 million default judgment (entered on March 18, 2004). **CMGT's Projections are entered in the record** as part of SC's Damages Prove Up. (Mo. to Amend, Ex. 7 to Ex. 4) SC's damages are based on CMGT's projected December 2006 IPO, which SC's Prove Up values at $377 million.

> **Note:** Per its lost Newco deal, CMGT's 20% share of the proved-up IPO value is $75 million. Per its lost Sealaska deal, CMGT's 49% share of the proved-up IPO value is $185 million.

54. Franco continues to seek Given's advice regarding the California Action even after SC obtains its default judgment. (Pltf. 56.1 Stmt. at 71 and Ex. 91)

55. In March, 2004, Franco and Given receive emails from or on behalf of CMGT shareholders inquiring about the status of CMGT. One such email states, "[i]s CMGT still active? We have heard nothing since being advised of the Spehar injunction...Please fulfill your obligation to respond." Franco asks Given how to respond. Given tells Franco to "send your note out to everyone regarding the LA lawsuit. I wouldn't bother with them [the CMGT shareholders] anymore than that." (*Id.* at 72 and Ex. 92)

56. Pursuant to that advice, Franco sends CMGT's shareholders an email, which was **pre-approved by Given**. In part, that email states, "[a]s Ronald B. Given of Mayer

Brown Rowe & Maw indicated to you in his e-mail dated September 19, 2003, I have resigned as President and CEO of CMGT, Inc. and no longer have any employment relationship with the company." Franco later testifies in his May 7, 2004 citation deposition, that he officially resigned on September 19, 2003. (*Id.* at 73 and Exs. 93-94, and 64 at p. 59)

II. ADDITIONAL "INCONSISTENT POSTIONS" ARGUMENTS

The crux of this Court's 2010 Opinion is that Grochocinski must take "inconsistent positions" to prevail. Specifically, the Court finds:

> "Grochocinski admits that SC never should have obtained a judgment for damages in the California litigation. This position is clearly contrary to the position on which SC prevailed in the California litigation. ... Further, if Grochocinski were to succeed in this action, SC would be the principal beneficiary of the bankruptcy that it caused." (2010 Op. at 27-28, FN 13 and at 30-31)[18]

and concludes:

> "Judicial estoppel is appropriate in this case. SC convinced one court that the terms of its contract with CMGT entitled it to $17 million, and having benefited from that decision, urges an inconsistent interpretation to gain an additional advantage at Defendants' expense. This Court will not allow SC to pervert the legal process in this way. Grochocinski is barred from arguing in this case that but for Defendant's negligence, CMGT would have succeeded in the California litigation. Without that argument, Grochocinski's malpractice action against Defendants fails as a matter of law." (*Id.*)[19]

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[18] As the Court notes, this reflects Defendants' longstanding argument: "[Defendants] argue that in order for Grochocinski to succeed in this case, he must prove that SC's claim in the California lawsuit—which led to the $17 million default judgment—had no merit. But according to Defendants, if Grochocinski succeeds in proving malpractice, he will have to turn over the lion's share of the recovery to SC whom he would have just proved had no right to recovery in the first place." (2010 Op. at 16)

[19] The Court also notes that Defendants argued this conclusion: "Although not calling it by name, the crux of Defendants' argument is that Grochocinski, standing in the shoes of SC, should be judicially estopped from taking a position in this case that is contrary to the prevailing position SC took in the California litigation. If Grochocinski is permitted to argue in this case that SC's contract claim—the claim that led to the $17 million default judgment in California, the bankruptcy proceedings, and this malpractice claim—is meritless, the integrity of the judicial system would be called into question." (*Id.*)

But there is no cognizable basis to apply judicial estoppel on the facts of this case for at least five reasons, and thus its application here is a miscarriage of justice that actually *undermines*, not protects, the integrity of the judicial system. Accordingly, if sustained on reconsideration and appeal, and broadly applied, there are troublesome implications for the legal system as a whole.

1. There is no actual identity of parties and thus no possibility of inconsistent positions as required for judicial estoppel.

Judicial estoppel precludes the **same party** from taking inconsistent **litigation positions** in different judicial proceedings. Here, there is no identity between Grochocinski and SC that would permit the court to impute SC's California litigation position to Grochocinski so as to manufacture "inconsistent positions" subject to judicial estoppel. Rather, Grochocinski's and SC's **beneficial/financial interests** have merely become aligned as a consequence of bankruptcy law and the legal relationship of trustee and creditor. As Defendants admit: "SC has no legal claim against Defendants, but merely has a financial interest in the outcome of Plaintiff's case. ...[Grochocinski] and SC did not have a common legal interest..."[20]

In fact, Grochocinski does not stand in Spehar's shoes. Grochocinski, as the trustee in bankruptcy, stands in the shoes of the estate, and exercises rights of CMGT to the extent permitted by law. Like every trustee in bankruptcy, Grochocinski has an obligation to all creditors and shareholders of the bankrupt corporation to maximize their financial recovery within the constraints of the bankruptcy law. When it comes to recovering claims against third parties, such as Defendants, this **alignment of beneficial**

[20] Defendants' March 26, 2008 Response to Plaintiff's Memo In Support of Privilege Log Assertions at 22, *Emphasis added.*

interests of trustees, creditors and debtors is simply a natural consequence of their respective statutory duties and economic interests. The obvious common goal is to maximize the recovery from the third party, maximize the estate, and maximize the recovery to all creditors. This is simply rational economic behavior. Defendants again: "After all, each creditor has a financial interest in maximizing the estate's assets." (*Id.*)

Generally speaking, in **every** instance where (a) there has been a pre-bankruptcy dispute and a successful prior adversary action by a bankruptcy creditor resulting in a judgment against the bankruptcy debtor and (b) the trustee in bankruptcy now seeks to recover against a third party for having caused that judgment, the interests of the bankruptcy trustee and **all** creditors (including the former adverse litigant) and shareholders of the bankruptcy estate become aligned against that third party and they all now have a **mutual interest** in collecting the former adverse litigant's judgment from that third party.

Thus, every such case where a bankruptcy creditor was a successful pre-bankruptcy litigant against the bankrupt necessarily results in the *former* adversary of the bankrupt becoming a *current* partner in interest with the bankrupt in collecting against its *formerly* adverse claim. And in every such case, this unavoidable **shifting of alignment of interests** *necessarily* results in the exact supposedly "inconsistent" litigation positions posture of this case. But simply because Grochocinski's and the interests of the CMGT's other creditors are now aligned with SC's interest does not mean that that the Court can or should impute SC's California **litigation position** to Grochocinski or to CMGT for judicial estoppel purposes.

As a policy issue, if the Court's judicial estoppel analysis and reasoning is sustained as to the mistakenly construed "inconsistent positions" here, then that analysis and reasoning must be applied to every such bankruptcy case and it would erroneously insulate every third party debtor or tortfeasor (including lawyers who commit malpractice), no matter guilt or harm, against justice and equity. Obviously, this would undermine, not promote, justice and equity.

2. The inconsistent positions finding directly attacks a litigant's right to freely allocate proceeds.

The argument that "if Grochocinski succeeds in proving malpractice, he will have to turn over the lion's share of the recovery to SC whom he would have just proved had no right to recovery in the first place" is (a) based on a false premise and (b) should not result in the application of judicial estoppel, in any case.

First, the false premise of this argument ("Grochocinski must prove SC had no right to recovery in the first place") is debunked by both the preceding and the following analyses. Second, the only reason Grochocinski must now turn over the proceeds to SC is because of the bankruptcy (the bankruptcy-court-ordered Sharing Agreement). If the bankruptcy proceeding did not exist, and CMGT were prosecuting this case (outside of bankruptcy) and had suffered this same harm as a result of Defendants, CMGT would be in exactly the same position in which Grochocinski now stands and CMGT would rightfully recover from Defendants **without any question whatsoever** as to whom and how it should allocate its proceeds.

Generally speaking, what any litigant, **bankrupt or not**, does or plans on doing with its recovery, if it recovers, should have no bearing on the issue of whether or not it should recover. In other words, the mere fact that CMGT is now bankrupt and

distributing its proceeds in bankruptcy should not erect a bar against recovering from a third party.

3. Defendants admit proximate causation, therefore Grochocinski need not litigate the case-within-a-case

The Court finds that Grochocinski must take inconsistent positions in litigation to prevail in the malpractice action **only** because it incorrectly assumes Grochocinski stands in SC's shoes, and **therefore** Grochocinski must now prosecute SC's California action by virtue of the "case within a case" doctrine applicable to legal malpractice actions.

First, per the analysis in 1. above, Grochocinski does not stand in SC's shoes. Grochocinski stands in CMGT's shoes, and there is no inconsistency in the positions that CMGT and Grochocinski advocate. In fact, CMGT ultimately never advocated a position as a litigant in the California action because it never appeared, yet it is apparent that, had it appeared, its litigation position would have been that SC's claim did not have merit. Grochocinski's position in the malpractice action is exactly CMGT's position: SC's contract claim did not have merit. Conversely, *SC's* position throughout the entirety of the Dispute, the California litigation and this malpractice litigation, was/is that its contract claim to Newco compensation is meritorious.

Second, even standing in SC's shoes, Grochocinski is *still* not required to prosecute the "case-within-a case" (and therefore take a position contrary to SC's position) to prove malpractice for two independent reasons: (1) Defendants admit proximate causation and (2) per the Motion to Amend (at 37-40), SC could not afford to go to trial v Defendants.

Defendants admit proximate causation.

The specific purpose of litigating the "case-within-a-case" in legal malpractice actions is to prove proximate causation. The idea is that a plaintiff in a malpractice action cannot simply allege that its lawyer caused damages to the plaintiff without actually proving that the lawyer's action was the proximate cause of that damage. Therefore, the "case-within-a-case" doctrine developed to establish that the legal malpractice was the actual proximate cause of the harm suffered by the malpractice plaintiff. Here, Defendants have always claimed that SC's position in the Dispute and California Action was "meritless, and in this action even admit:

> "CMGT would have won the case at any time if it had just defended itself. In fact, if CMGT had defended itself, it would have won the preliminary injunction hearing and would have closed the Newco Deal."
>
> (Def, Feb. 7, 2007 Reply at 19, *emphasis added*)

But Defendants had a duty to defend CMGT (*see* Chronology at 34), and therefore the above admission (that CMGT would have won the California Action at any time - even at TRO and/or PI - if it had just defended itself), *necessarily* **admits** that Defendants' malpractice **caused** SC's California judgment. Grochocinski is not required to litigate the case-within-a-case to establish an **admitted** fact (proximate causation). Accordingly, the Court's finding that Grochocinski must contradict SC's position in its California Action to prove malpractice is incorrect, even under the erroneous assumption that Grochocinski stands in SC's shoes.

SC could not afford a trial v Defendants.

As the Motion to Amend (at 37-40) shows, Illinois law (*Tri G*) does not hold that Grochocinski must litigate the case-within-a-case under the particular facts of this case. That is because here, Defendants' malpractice was not the cause of a trial not occurring in

the California Action. Rather, once Defendants (not Byron Hollins) represented CMGT in dealing with SC's counsel Ken Franklin pre-TRO hearing, the fact that SC simply could not afford to oppose Defendants absolutely precluded a trial **before** Defendants first committed malpractice by failing to appear at the TRO hearing.

4. The "sword and shield" doctrine bars Defendants inconsistent positions argument.

Even *if* the Trustee must litigate the case-within-a-case and assert the allegedly inconsistent position that SC's claim had no merit, Defendants *still* cannot contest that allegedly inconsistent position since it directly correlates with Defendants' own consistent position. Although contradicted by indisputable evidence (see ¶¶2 and 11-12 herein), Defendants nevertheless have always asserted, and still assert, an allegedly good faith belief that SC's claim was not meritorious. It would be inherently unfair for Defendants to *now* block Grochocinski from asserting that exact same position. In other words, Defendants are attempting to use their litigation position as both a sword (in the Dispute and California Action) and a shield (in the malpractice litigation). Defendants themselves admit that is forbidden:

> "[Grochocinski] cannot use his alleged pre-filing investigation and good faith belief as a sword to try to defeat the [Unclean Hands] Defenses while at the same time shielding that information from discovery and examination by Defendants."
>
> (Defendants' March 26, 2008 Response to Plaintiff's Memo In Support of Privilege Log Assertions, at 17.)

Likewise, Defendants attempt to use their own destruction of CMGT's funding prospects as both a sword and a shield.

Sword: When attacking SC, Defendants state:

> "Spehar obtained an injunction prohibiting the closing of the Trautner Deal ... That injunction was also the end of CMGT. ... Yet, to prove malpractice, the Trustee would have to show that the Spehar Lawsuit should have failed and that Spehar had no right to any recovery in the first place. So, in the end, if this case succeeds, Spehar would be rewarded with a multi-million dollar windfall for filing the meritless Spehar Lawsuit that put CMGT out of business. Nothing could be more absurd.
>
> (Defendants' May 29, 2009 Mo S.J. Memo at 1-2, *Emphasis added*)

Shield: But when laying the blame for their own failure to defend CMGT on CMGT's innocent shareholders, whom they intentionally misadvised and misled (*see* Chronology), Defendants take the exact opposite position:

> "The Spehar Lawsuit did not prohibit CMGT from getting financing. It prohibited CMGT only from closing the Newco Deal. ... In fact, if CMGT had defended itself, it would have won the preliminary injunction hearing and would have closed the Newco Deal."
>
> (Defendants' Feb. 7, 2007 Reply at 9 and19, *Emphasis added*)

Applying judicial estoppel under these circumstances would pervert, not protect, the integrity of the judicial process and result in a grave miscarriage of justice.

5. The "clean hands" doctrine and Laches also bar Defendants inconsistent positions argument.

Again, even *if* there is somehow an inconsistency in the litigation positions advocated by Grochocinski (there is not), that inconsistency results from Defendants' intentional or negligent acts. CMGT's position as to SC's claim was based upon Defendants' pre-litigation analysis and advice. Then, Defendants counseled CMGT that SC's claim had no merit. Now, years later, Defendants seeks to insulate themselves from liability by precluding CMGT from asserting the very same position that CMGT developed based on Defendants' own analysis and advice, and which Defendants *still* advocate as accurate.

In short, the Court is permitting Defendants to have its cake and to eat it too. Defendants' position appears to be that CMGT would have won the case and avoided bankruptcy and millions of dollars of liability on the strength of the cost of a plane ticket, plus *maybe* a few thousand dollars for a court appearance and travel time. Yet Defendants advised their client not to appear to defend, and themselves did not appear to defend on CMGT's behalf.

Under these circumstances, the doctrines of unclean hands (no party may benefit from his own wrong) and laches (negligent delay in asserting the "inconsistent positions" argument), independently, ought to preclude the application of another equitable remedy such as judicial estoppel. Furthermore, as noted above, no party should be permitted to bar another party from asserting an admitted fact (proximate causation).

Summary

Because of CMGT's bankruptcy, SC's formerly adverse interest has now shifted into alignment with CMGT's Estate and its other creditors. CMGT's bankruptcy trustee (not SC, CMGT's former adverse litigant) is now prosecuting the malpractice action against a third party (Defendants). SC (a non party to the malpractice action like all Estate creditors) should not be singled out from other creditors (a) simply because it was a former litigant of the bankrupt or (b) simply because it is the largest and most aggressive of the now-aligned bankruptcy creditors.

As a general rule, any time there has been a prior litigation or dispute over a bankruptcy debt and a subsequent third-party collection action by the bankrupt, an inconsistent alignment of interests necessarily arises. As in all such cases, the fact that SC sued CMGT and believed it had merit necessarily led to an "inconsistent" alignment

of interests once the trustee in bankruptcy took over and pled malpractice against Defendants. But an **alignment of interests** is not the same as, and should not be construed to be, a **litigation position**. Here, the Court mistakenly confuses the two concepts to manufacture a pivotal but erroneous "inconsistent positions" finding.

Defendants also admit they were the proximate cause of SC's judgment, removing the need (and requirement) to litigate the "case-within-a-case" to prove proximate causation. Of course, when SC's interests were not aligned with CMGT, SC believed in and presented its best case and Defendants disagreed with, and counseled CMGT to disagree with, the merit of SC's California action. And Defendants continue to disagree here. By asserting SC's claim was "meritless" and CMGT would have "won the case at any time," both before and after judgment was entered, Defendant have *de facto* admitted that their negligent and/or intentional actions were the proximate cause of the harm suffered by CMGT.

Defendants also seek to use their position as both a sword and a shield, which is inherently unfair and forbidden by law. Now that SC's interests have become aligned with CMGT's bankruptcy estate, Defendants seek to bar CMGT's trustee from asserting their own asserted position that SC's claim had no merit.

In reality, there is no "inconsistent position" taken by Grochocinski because (a) it is a trustee in bankruptcy (Grochocinski) that is asserting the malpractice position, not SC; (b) the trustee's position is the same as CMGT's historical position and the position that CMGT would have advocated absent Defendants' malpractice and (c) there is no need to litigate the case within a case (merit) because Defendants admit proximate causation. Therefore, Grochocinski can freely assert that SC's claim had no merit (as

CMGT always has) and that it would not have suffered harm but for Defendants' negligence, and SC can freely assert (as it always has) the merit of its California action, each without giving rise to any "inconsistency" that would be cognizable for judicial estoppels' purposes, or otherwise.

In fact, there is only a change of **alignment of interests** and a change in the **litigation parties** in different actions (the California Action and the Malpractice Action), not an inconsistency as to **litigation positions**.

Lastly, by its singular focus on SC the Court now completely and unjustly disregards other creditors' and shareholders' legitimate claims against the $17 million judgment damages (Count II of the malpractice complaint) and their potential $1.6 million recovery. And by its singular focus on SC's judgment, the Court also completely and unjustly disregards the bankruptcy estate's lost profits damage claim (Count I of the malpractice complaint) against Defendants.

WHEREFORE, Spehar prays that this Court will grant its Motion to Alter or Amend this Court's Final Opinion and Order.

Respectfully submitted,
Gerry Spehar, CFA

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CERTIFICATE OF SERVICE

I, Gerry Spehar, certify that I caused a copy of the attached 1) *Reply in Support of Motion to Intervene and (2) Supplement to Motion to Alter or Amend* to be served on the parties listed below, by Chicago Messenger Service, on this 10th day of June, 2010.

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LETTER to our Shareholders

CHRIS E. MCNEIL, JR.

ALBERT M. KOOKESH

2008 was extremely difficult and 2009 will be equally challenging. We are in the midst of the worst economic crisis since the Great Depression. The recession has hit businesses nationwide, including Sealaska Corporation. We experienced a loss of $409 million, almost all attributable to a decline in value of our Permanent Fund and Investment and Growth Fund.

It is important to note that all of Sealaska's 2008 investment losses represent unrealized non-cash losses based on the value of [illegible] sold assets on December [illegible], 2008. We still own these assets and [illegible] so may the value of [illegible] a drop in the value of [illegible] declines are of less [illegible] invest in their homes for the long-term. Similarly, Sealaska takes a long-term [illegible] to its investments to [illegible] spikes of market volatility [illegible] over time.

Even with these losses [illegible] on many fronts. Our [illegible] ability to quickly convert assets to cash [illegible] allows us to remain [illegible] and take advantage of [illegible] arise. See MD&A [illegible]

Our Permanent Fund, a long-term asset that provides dividends to tribal member shareholders, has grown from $64 million to $68 million while [illegible]

2008 in summary

The following summarizes Sealaska's five headline enterprises during 2008, from education scholarships to new business ventures.

Sealaska remains a strong and financially liquid Corporation despite sustaining losses in the global economic downturn of 2008. Thanks to strong liquidity and abundant investment capital, the Corporation is positioned to weather the current downturn and capture new investment opportunities.

Throughout 2008, Sealaska continued to pursue innovative new business ventures while actively managing its long-term investments to provide a secure future for our tribal member shareholders.

For example, we responded to shifting market demands by creating a new company that markets and distributes sustainable wood products. Our manufacturing, information technology, environmental services companies continued a disciplined but disciplined approach to business and remained remarkably resilient through the economic downturn.

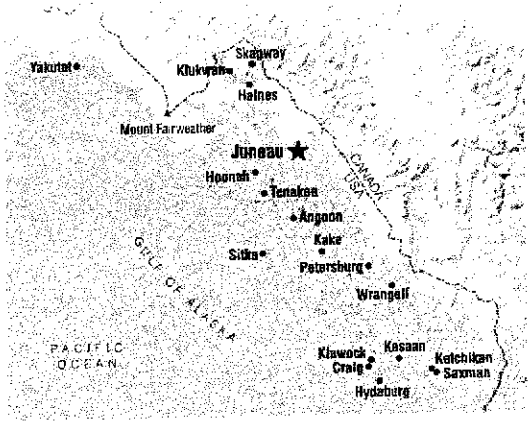
We also began a companywide strategic initiative to incorporate sustainable practices in all of Sealaska's lines of business and subsidiaries. Those practices, which reflect our Native values, will factor into performance measurements for Sealaska managers going forward.

Relying on deeply rooted values of resilience, perseverance and reverence for our lands, we are navigating turbulent times in order to build a strong future.

Five year summary of selected consolidated financial data

	2004	2005	2006	2007	2008
Total revenues	$ 151,799	$ 144,321	$ 169,887	$ 193,977	**$ 125,774**
Net income (loss)	16,190	25,271	41,159	30,037	**(40,851)**
Total assets	276,012	289,360	328,486	360,944	**333,892**
Shareholders' equity	206,029	224,479	256,155	273,652	**224,960**
Long-term bank debt	14,427	13,433	14,218	21,923	**37,074**
Short-term bank debt	1,676	1,681	1,736	2,914	**2,253**
Current ratio	3.25	3.26	3.65	2.75	**2.68**
Bank debt/equity ratio	0.08	0.07	0.06	0.09	**0.17**
Shareholders' equity per share	130.79	142.50	162.61	165.08	**123.98**
Net income (loss) per share	10.28	16.04	26.13	18.12	**(22.66)**
Dividends per share	$3.23	$4.33	$6.02	$7.61	**$4.32**
Cumulative distributions to shareholders and Village Corporations since inception	325,351	338,082	356,839	383,597	**409,926**
Cumulative Section 7(i) and 7(j) payments	$ 298,481	$ 306,419	$ 308,721	$ 315,455	**$ 315,499**

❖ Dollars are in thousands except per share amounts and ratios. Years ended December 31.



$32 million in dividends over the past six years (including 2008's significant losses).

In 2008 we launched several new companies to continue diversifying our offerings through innovative, sustainable lines of business. We maintained our focus on forest management practices that provide employment and lasting benefits to our people while upholding our Native values and protecting our precious natural resources.

We continued to secure important federal government contracts and to successfully compete against other companies. Our growing success with federal procurements and our diverse offerings in products and services make Sealaska well poised to participate in President Obama's economic stimulus package.

We are intensely focused on managing our general and administrative expenses and are developing "lean" initiatives to reduce the cost of our corporate operations and help our operating companies withstand recessionary trends. While strongly focused on economic priorities, we have maintained our commitment to providing scholarships and supporting the important work undertaken by Sealaska Heritage Institute to advance our Native cultures and languages. Those initiatives are in line with findings from a survey of tribal member shareholders, who identified providing educational opportunities as their top priority among services provided by Sealaska.

In these difficult economic times, your team of board of directors and management is working hard to implement an innovative strategy to assure that we will emerge stronger from this national economic crisis. Our Elders are testament to our people's resilience. They remind us that troubles pass, that time often fades our trials into memories that leave us wiser and stronger. Sealaska is well positioned to weather the economic storm. Over the coming year, we will continue to move forward with the same deliberation that has served us as a people and as a company. Our Elders stand as our inspiration, teaching us how to persevere with grace and wisdom.

Chris E. McNeil, Jr.
President and Chief Executive Officer

Albert M. Kookesh
Board Chair

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 2

Gerry Spehar

From: Louman01@aol.com
Sent: Thursday, May 01, 2003 4:18 PM
To: Given, Ronald B.
Cc: Gerry Spehar
Subject: Fwd: CMGT Term Sheet & Exhibit
Attachments: CMGT Term Sheet & Exhibit

In a message dated 5/1/03 5:59:16 PM Central Daylight Time, patrick.duke@sealaska.com writes:

> Subj: **CMGT Term Sheet &Exhibit**
> Date: 5/1/03 5:59:16 PM Central Daylight Time
> From: patrick.duke@sealaska.com
> To: louman01@aol.com
> File: **CMGTTermSheet5-01-2003Final.zip** (66294 bytes) DL Time (TCP/IP): <1 minute
> *Sent from the Internet*
>
> Lou,
>
> Look forward to talking tomorrow.
>
> regards,
>
> patrick

Ron: Here's the proposed term sheet from Sealaska. I have not reviewed it but will do so now. Patrick told me he hopes a few issues are not dealbreakers. I sent Gerry a Cc so we can discuss with him prior to the telecon.

Sealaska would like to teleconference Friday at 10:00 AM Alaska time / 1:00 PM CDT. I took the liberty of setting up a ConferenceCall.com teleconference at that time for you and I to discuss the term sheet with them. Sealaska is asking only you and me to be on the teleconference. The Sealaska folks participating are:

Rick Harris, EVP & COO
Bill Strafford, EVP & CFO
Patrick Duke, Treasurer & Corporate Investment Officer
E. Budd (Budd) Simpson, Sealaska attorney (with law firm of Simpson, Tillinghast, Sorensen & Longenbaugh, P.C.

I'll call you in the AM to make sure this works for you, Ron.

Hope you had a safe trip downstate.

Best regards,

5/27/2010

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

5/27/2010

Sealaska CORPORATION

May 01, 2003

Personal and Confidential

Lou Franco
President & CEO
CMGT
2 S. 647 White Birch Lane
Wheaton, IL 60187

Re: **Term Sheet to Acquire Majority Interest of CMGT, Inc.**

Dear Lou:

Sealaska Corporation (SC) is pleased to provide you our expression of interest to purchase fifty-one percent (51%) of the total equity interest, represented by common stock to effect a controlling ownership of CMGT. The following is a summary of the salient terms of the proposed transaction:

- SC's fifty-one percent (51%) ownership interest shall be effective upon execution of the closing documents as described herein, without reference to the amount of funding provided by SC at that time. The fifty-one percent (51%) controlling interest shall be purchased for $100 and other good consideration, and may be structured as a purchase through a new legal enterprise established for such purpose, in order to optimize Sealaska's and existing CMGT owners' tax position. Shares or other ownership interest in such new enterprise may be issued as consideration for the transactions contemplated herein.
- SC agrees to conditionally expend a maximum of $950,000 for capital expenditures and operating expenses (working capital), which will be expended in a three-phase program. Phases II and III are conditional and will require specific performance metrics that must be met in order for SC's funding requirement to remain in force, and to move on to the next phase. Sealaska's commitment shall be structured as a subordinate loan, subject to repayment according to the priorities set forth in the table below.
- Phase One – SC will fund, for a term not to exceed four months following closing, working capital requirements of CMGT, based on the current working capital needs, plus additional considerations for:
    - Salary and benefits for Lou Franco – which will be negotiated prior to closing and governed by a new employment agreement, plus incremental and conditional consideration of $70,000 for

outstanding personal credit card debts directly relating to CMGT past expenses. In addition outstanding personal credit card debts of Rob Crandall totaling $2,500 will be funded.

- Salary and benefits for Bill Walker and Rob Crandall, if appropriate, which will be negotiated prior to closing and governed by an employment agreement.
- A consulting agreement with Barat Saoji, if terms satisfactory to CMGT are negotiated. After CMGT achieves break-even status, Mr. Saoji may be offered an employment agreement on terms satisfactory to CMGT.
- Reasonable travel expenses necessary to attract new business.
- IT equipment if required and software upgrade for the Toronto Call Center, which will include the upgrade of the AbsenceExpert software to a SQL server platform.
- Rental/Lease and improvements of the US-based call center, based on a budget approved by SC.

In this time frame SC will, at its expense, market the AbsenceExpert software, using its Minority/Diversity Supply and federal procurement advantages. In order for SC to fund working capital beyond this four-month period CMGT must contract or be in final negotiations for contracts to serve no fewer than 50,000 additional "lives."

- Phase Two – At the end of the initial four-month period if CMGT has met the terms of Phase One, SC will continue to fund the monthly working capital, if required, for an additional four-month period, up to the $950,000 cap. During this Phase Two, CMGT must achieve break-even status.
- Phase Three – After CMGT achieves break-even status, and is internally able to fund working capital from free cash flow, any loans from SC in excess of the initial $950,000 (Priority One); investor notes (Priority Two); and professional services (Priority Three), all will be paid with no more than fifty percent (50%) of the future free cash flow of the business. Sealaska's subordinated loan at six percent (6%) cumulated interest (Priority Four) will begin to be amortized and paid from available remaining cash flow. All payments will be made according to the following priorities; and except as otherwise noted, all items within each priority grouping have the same priority regardless of the order in which they are listed:

First Priority: Loans in excess of the initial $950,000 Sealaska funding
Sealaska Corporation – Advances, if any, in excess of $950,000

Second Priority: Investor Notes
Dr. Ron Holman -- $100,000 (Note)
Richard Ross -- $120,000
Touchspeed Purchase -- $105,000
(Note: Rob Crandall's contribution to Touchspeed purchase to be in partial consideration for four percent (4%) of shares)

Third Priority: Professional Services
Spehar Capital -- $50,000 (proper documentation required)
Wong & Knowles -- $50,000 (proper documentation required)
Mayer Brown -- $200,000 (proper documentation required)

Fourth Priority: Subordinate Working Capital Contribution
Sealaska Corporation – up to $950,000
(Repaid over three years at six percent (6%), beginning as soon as profits [free cash flow] available)

- All Lou Franco's or other past expenses must be reasonable and supported by documentation prior to closing and must be acceptable to SC in its discretion. No preexisting liabilities, contingent or liquidated, shall be paid from SC's capital contribution or loans except with SC's prior written approval.
- The table appended hereto as Exhibit A reflects all material obligations of CMGT, according to current management, and the allocation of ownership equity after the proposed transaction closes.
- SC will hold three of the five Board seats. The other two seats will be filled by the CEO of CMGT and an industry professional (outsider) who will be nominated by the CEO.
- All existing shares of CMGT Corporation preferred stock will be converted to a single class of ownership, under terms of a shareholders' agreement or similar instrument to be negotiated prior to closing. Such agreement will include provisions restricting sale of stock by the minority shareholders or key management personnel (KMP) for a period of three years, and thereafter, a first refusal option by SC should any minority shareholder or KMP desire to sell, and exercisable at any time at SC's option, should any KMP leave employment voluntarily, or be dismissed for good cause. The terms of such option shall be set forth in a shareholders' agreement and shall be based on the value of the shares at

the time of exercise. On or before May 9, 2003, CMGT shall provide evidence satisfactory to SC that all of CMGT's current shareholders are aware of and agree with the terms of this letter agreement, subject to completion and execution of a definitive purchase and sale agreement and related documentation.

- A manager, appointed by SC and approved by the Board, will serve as CFO, at no cost to CMGT until Phase III, within the terms of an operating agreement. The CFO will be responsible for approving all expenditures and will have signatory authority on the CMGT disbursements account, along with CMGT's CEO. In addition, the CMGT accounting records and financial schedules will be loaded onto a server that flows through SC Oracle finance system so that SC can review the financial status, accounting records, and listing of receivables, payroll, service contracts and payables at any time, as well as giving SC the ability to roll up the monthly financial into its consolidated statements. CMGT's outsourced accounting transactions firm will perform ongoing accounting duties including the billing systems, A/R and A/P, and supervising a service bureau payroll system. The Board of Directors will be responsible for naming the year end external audit firm.
- CMGT, as an added inducement to SC to invest into this enterprise, will also partner, under an exclusive relationship, with SC to review and analyze the opportunities in the "minority owned insurance holding company" industry, recognizing that SC will make an investment into such enterprise at its sole discretion.
- CMGT's management will be fully responsible for their own and the company's compliance with all applicable local, state and federal laws, including but not limited to securities laws, employment-related laws, and environmental laws. CMGT shall also be responsible for obtaining the concurrence with and execution of any further documents or agreements by CMGT's existing stockholders and directors.
- This offer to purchase fifty-one percent (51%) of CMGT is subject to the completion of SC's due diligence process, to SC's satisfaction, and the execution of a definitive stock purchase agreement and other related instruments, including shareholders' agreement, employment agreements, Sealaska Code of Conduct, financial operating agreement and noncompetition agreement, acceptable to both parties, including customary terms, covenants, representations, warranties, conditions, indemnifications, necessary filings, consents, approval of the Sealaska Board of Directors and the Board of Directors and shareholders of CMGT, to the extent required. Upon execution of this letter by both parties it shall constitute a binding and exclusive commitment by each

party to proceed with the due diligence investigation and documentation of the transaction set forth above. If a final, binding purchase agreement is not executed by May 30, 2003, unless extended by mutual written agreement, the commitment expressed herein shall be deemed terminated and neither party shall have any further obligation to the other.

- Any advance of funds by SC above the amount of $950,000, which shall be at SC's sole discretion, shall be a loan to CMGT and shall be senior debt and shall be repaid on a priority basis ahead of any other existing or new loan obligation to a bank or any investor or management personnel, as shown on the above table, from fifty percent (50%) of free cash flow once CMGT achieves better than break-even status. Any such loan shall bear interest at the rate of eight percent (8%) per annum. Any advance of funds by SC prior to closing shall be deemed to be a portion of SC's initial contribution hereunder if the transaction is consummated, or if no transaction is consummated, such advances shall be a loan from SC to CMGT and shall be repaid on demand, with interest from the draw down date of any advances, at the rate of eight percent (8%) per annum. If additional capital (equity) is required by CMGT to expand or integrate additional lines of business or purchase new business or companies, CMGT will set up separate company/s, and the existing/current shareholder ownership of CMGT will have no ownership rights to the new company/s except for the right to invest new funds for an allocation of ownership based on total equity investment by all parties.
- SC will have the right at any time during the ramp up of CMGT to break-even status to discontinue loaning funds to CMGT and return its fifty-one percent (51%) stock ownership to the treasury of CMGT with no future obligations or liability accruing to SC, other than the repayment of any subordinated loans at six percent (6%), over three years, if and after CMGT has reached positive free cash flow thereafter.
- These terms and conditions are subject to approval of the SC Board of Directors.
- This letter supersedes all prior understandings on this subject, written or oral, except for any written confidentiality agreements between the parties, which will remain in full force and effect.
- The existing KMP and stockholders will warrant and indemnify the validity of all key representations in the various agreements between and among SC, CMGT and KMP.

If the above terms are acceptable to you, please sign in the space provided below to signify your agreement and return to my attention.

AGREED TO AND ACCEPTED on this ____ day of _____, 2003.

CMGT	SEALASKA CORPORATION
By_____	By_____
Lou Franco	Chris E. McNeil, Jr.
President & CEO	President & CEO

Attachment: Schedule of Equity Ownership Interest of CMGT (Exhibit A)

cc: William F. Strafford
Richard P. Harris
Patrick Duke
E. Budd Simpson

Equity Ownership Interest of CMGT

CMGT Existing Obligations

Investor Notes

Dr. Ron Holman Note	$100,000
Richard Ross	$120,000
Touchspeed Purchase	$105,000

(Note: Rob Crandall's contribution to Touchspeed purchase to be in partial consideration for 4% of shares)

Total Investor Notes	**$325,000**

Professional Services

Spehar Capital	$100,000
Wong & Knowles	$50,000
Mayer Brown Rowe & Maw	$200,000
Total Professional Services	**$350,000**
Total Existing Debt	**$675,000**

CMGT OWNERSHIP

Sealaska	**51.0%**

49% Owners

Management

Lou Franco	9.0%
Rob Crandall	4.0%
Bill Walker	2.0%
Management Total	**15.0%**
Existing CMGT Investors	14.7%
Craig Jackson	2.0%
Catherine Garner	0.5%
Option Pool	16.8%
TOTAL	**100.0%**

Exhibit A

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 3

Subject: Re: CMGT Term Sheet & Exhibit
From: <Louman01@aol.com>
Date: Thu, 1 May 2003 19:48:00 EDT
To: <patrick.duke@sealaska.com>
CC: "Ronald B. Given,Esq." <RGiven@mayerbrownrowe.com>, "Chris McNeil" <chris.mcneil@sealaska.com>, "Richard P. \(Rick\) Harris,bill.strafford@sealaska.com \(Bill Strafford\),patrick.duke@sealaska.com \(Patrick W. Duke\),bsimpson@stsl.com \(E. Budd Simpson,Esq.\)" <rick.harris@sealaska.com>

Patrick:

I've shared the term sheet and attached exhibit with Ron Given, Mayer Brown et al. Ron is out of town but expected back in his office tomorrow AM. As we discussed, I've arranged a dial-in ConferenceCall.com Ready 800 Teleconference - here's the dial-in information:

Time: 10:00 AM Alaska (GMT -9:00)
01:00 PM CDT (GMT -6:00)

Dial-in #: 1-800-261-3225

Passcode: 612733

Participants

CMGT: Lou Franco
Ron Given, Mayer, Brown, Rowe & Maw

Sealaska: Rick Harris
Bill Strafford
Patrick Duke
Budd Simpson, Simpson, Tillinghast, Sorensen & Longenbaugh

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
==

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 4

Gerry Spehar

From: Louman01@aol.com
Sent: Wednesday, May 07, 2003 1:51 PM
To: Patrick W. Duke
Cc: Chris McNeil; Rick; Bill Strafford; Bob Wysocki; E. Budd Simpson,Esq.; Given, Ronald B.; gspehar1@earthlink.ne
Subject: CMGT/Sealaska Issues
Attachments: PatrickDukeTermSheet05-01-03_CMGTresponse_05-07-2003ljf.pdf

Patrick:

Please see my letter, attached.

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

CMGT, Inc.®

First InTouch™

LOUIS J. FRANCO, RHU
Chairman, President and Chief Executive Officer

May 7, 2003

VIA E-MAIL TO ALL PARTIES

Patrick W. Duke, CFA
Treasurer & Corporate Investment Officer
Sealaska Corporation
One Sealaska Plaza, Suite 400
Juneau, AK 99801

Re: Sealaska/CMGT Issues

Dear Patrick:

As is my duty, I will present your Term Sheet dated 5-01-03 to my shareholders. However, I cannot recommend to my shareholder constituency that CMGT participate in an investment plan and business combination that I believe will lose our collective shareholder's money - as this investment surely will under that approach and those terms. In addition to my shareholders, I also have a duty to my family to consider…I control neither, and I believe neither will allow me to pursue anything near this term sheet. Finally, as to my personal feelings, I have a long business history of building successful business units and want to be involved in building a success story for you and all our mutual shareholders, not the failure that I believe would surely result from your Term Sheet's approach.

So, unless we can refocus our negotiations on the terms & conditions incorporated in my 5-05-03 response to your Term Sheet and previously agreed to in your MOU & LOI, I believe the best that can be made of this is to ask you to honor your gentleman's agreement to share the opinions and due diligence information that we've worked so hard to develop together over the past strenuous months with new investors that we will be approaching. As you well know, it was very difficult to obtain and compile all of this due diligence. Most of our clients and industry sources, consisting of the "Who's Who" of our industry, have grown extremely weary of supplying due diligence to our "potential investors". As you know, they reluctantly complied once again for Sealaska because the deal seemed so credible to them based on your LOI that Bill authorized us to share with them, as well as your positive indications in meetings with a key CMGT prospect and prospective partner organization. Our credibility will now be thoroughly shot if I have to go back to them again given how drastically your deal has changed. Coupling that with our financial situation and lack of time and resources, I doubt we can again recreate this body of due diligence as quickly as we need – if at all. Hence, my request for your help.

Speaking for myself and all CMGT shareholders, I am truly sorry it has come to this, Patrick. As you know, I'm sure, all of us at CMGT were extremely excited to proceed with Sealaska under the terms we previously negotiated and were outlined in Sealaska's MOU and LOI. I honestly thought that the many positive reviews, testimonials and market assessments/statistics that you subsequently received from your own outside consultant and a wide base of top-tier industry participants and clients, would only have increased your comfort level and Sealaska would have become even more inclined to proceed under the terms of its LOI. So, I am truly surprised and perplexed that your risk/reward assessment, as reflected in

your Term Sheet, has suddenly turned drastically pejorative after having reviewed this credible body of tremendously positive due diligence.

Be that as it may, as we all proceeded with that due diligence in good faith based on your LOI terms, I would hope you will be good enough to share all due diligence information and recommend us to new investors so that we might more quickly get funded under a scenario that will work for our business and shareholders.

At our legal counsel's request, I must also formally request that you and any of your advisors/representatives who have had access to our evaluation materials keep all of our proprietary CMGT and MOIC information, concepts and ideas strictly confidential, and that you act on none of it, as required by the NDAs executed by Sealaska. We will continue to pursue both opportunities and may ask you to return or destroy the information we've shared with you if we cannot regroup and proceed under some arrangement that more closely resembles the MOU and LOI we previously mutually agreed upon, and recognizes the positive investment characteristics CMGT demonstrates and that Sealaska's due diligence and its own investment banking and market consultants have confirmed.

I sincerely hope we can, Patrick, because I know we agree that our industry has "virtually unlimited upside" for a lead diversity minority player like Sealaska. As the many testimonial letters you've received indicate, CMGT and Sealaska could quickly become a major success story in this industry...possibly leading to an even more significant and potentially lucrative involvement in the larger insurance industry (MOIC concept). Both Absence Management and the broader insurance industry represent significant new high-margin investment diversification opportunities for Sealaska, and, as a minority myself, I would have loved to have helped Sealaska realize its potential in both, albeit under separate business endeavors.

I would have welcomed our organizations finding a way to achieve a mutually beneficial business combination and hoped that we would further our negotiations to achieve that goal. Nevertheless, I will now act on my duty to present your Term Sheet dated 5-01-03 to my shareholders for their consideration, just as I would hope Sealaska management will act on its duty to Sealaska's shareholders by presenting my full 5-05-03 response to your Term Sheet and this letter to your Board for their consideration.

Very truly yours,

Cc: Ronald B. Given, Esq.
Messers. Chris McNeil, Rick Harris, Bill Strafford, Bob Wysocki, Budd Simpson, Esq.

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 5

Gerry Spehar

From: Louman01@aol.com

Sent: Wednesday, May 07, 2003 6:29 PM

To: Given, Ronald B.

Subject: Re: Chuck

THanks, Ron - I will call Chuck tonight.

Also, Patrick Duke from Sealaska called returned my call and said:

* He, Bill Strafford & Chris McNeil reviewed my letter and they want to try one more time to strike a deal with CMGT - they believe there is a "disconnect" and cannot see why CMGT sharehoders would object to their terms, etc.

* Chris asked Patrick to setup a conference call between Patrick, Bill & Budd Simpson (their attorney) and you and me for sometime tomorrow morning - I suggest 11:00 AM CDT / 8:00 AM Alaska Time.

I need to give you the background of the call because the tone was quite different - in an unusally positive way! Can we discuss tomorrow AM? If you get this tonight and want me to confirm the telecon I wouold be happy to do that.

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

Gerry Spehar

From: Louman01@aol.com
Sent: Wednesday, May 07, 2003 8:47 PM
To: Given, Ronald B.
Subject: Re: Chuck

Ron:

09:30 CDT is OK for me & Gerry (I spoke with him tonight) - I'll call you in the AM.

Methinks something in our letter got to them - probably the mention of their Board.

You are right about surprises and I bet we'll hear about a few more tomorrow!

Best regards,

Lou

PS - I spoke with Chuck & he was also full of surprises - he said he wished me and you and Gerry the best in dealing with Sealaska. And he encouraged me to make the best deal possible for "me", whether it's Sealaska or whomever, and not to worry about him or the other shareholders as long as they get "something out of the deal" - I think your brief talk with him gave him some religion & I hope he "remembers" what he said when he awakes tomorrow! Thanks for taking his call(s), Ron, it really helps me manage my relationship with him.

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
E-mail2: lfranco@cmgt.com

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SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 6

Gerry Spehar

From: Louman01@aol.com

Sent: Thursday, May 08, 2003 6:32 AM

To: Patrick W. Duke

Cc: Chris McNeil; Rick; Bill Strafford; Bob Wysocki; E. Budd Simpson,Esq.; Given, Ronald B.; gspehar1@earthlink.ne

Subject: Confirmation of Telecon

Patrick:

11:00 AM CDT (GMT -06:00) / 8:00 AM Alaska Time (GMT -09:00) works on our end with Ron Given. Let's call into ConferenceCall.com at that time - here's the conference details:

Dial-up #: 1-800-261-3225

Passcode: 612733

Let me know if we need to change the time if this doesn't work for you.

As we discussed, Ron and I will be on the phone and I understand you, Bill and Budd will be on your end. I look forward to our discussion and hope we can find a way to get on the same page and strike a deal that satisifes our mutual interests. Thanks for making the time for our telecon - talk with you later this AM.

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
E-mail2: lfranco@cmgt.com

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SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 7

Gerry Spehar

From: Louman01@aol.com
Sent: Tuesday, May 13, 2003 1:53 PM
To: Given, Ronald B.
Cc: Gerry Spehar
Subject: Sealaska Letter
Attachments: SealaskaRickHarrisLetter05-13-2003.pdf

Ron:

This just came in - I will call you in a few minutes re: this & Mitre & Associates.

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
E-mail2: lfranco@cmgt.com

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Sealaska CORPORATION

May 13, 2003

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

Dear Mr. Franco:

Upon review of your most recent proposed revisions to Sealaska's term sheet, received from you on Monday, May 12, 2003, Sealaska Corporation has concluded that it is not possible to reach agreement on Sealaska's acquisition of a majority interest in CMGT. There are numerous areas of continuing disagreement between the parties on fundamental economic and other issues. Among other things, CMGT's latest counteroffer is materially inconsistent your presentation of this proposal to the Sealaska Board of Directors.

Sealaska will treat the Evaluation Material we have received in an ethical and confidential manner, pursuant to the Confidentiality Agreement of July 23, 2001, and expect that CMGT will do the same with respect to Sealaska's proprietary information in possession of CMGT. Sealaska will return or destroy all Evaluation Materials provided to it by CMGT.

Sealaska regrets that we were unable to reach agreement. The opportunity afforded by CMGT had exciting possibilities, but required that the parties reach final agreement. We wish you and the other CMGT investors success.

Sincerely yours,

Richard P. Harris
Executive Vice President

cc: Chris E. McNeil, Jr., President & CEO Sealaska
Bill Strafford, Executive Vice President & CFO, Sealaska
Patrick Duke, Treasurer & Corporate Investment Officer, Sealaska
E. Budd Simpson, Corporate Counsel

One Sealaska Plaza, Suite 400 • Juneau, AK 99801-1276 • Phone (907) 586-1512 • Fax (907) 586-2304

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 8

Subject: Fwd: Sealaska Proposed Structure
From: <Louman01@aol.com>
Date: Mon, 14 Apr 2003 20:47:27 EDT
To: "Ronald B. Given,Esq." <RGiven@mayerbrownrowe.com>
CC: "Gerry Spehar" <gspehar1@earthlink.net>

ForwardedMessage.eml **Content-Type:** message/rfc822
Content-Encoding: 7bit

Subject: Sealaska Proposed Structure
From: Duke Patrick <patrick.duke@sealaska.com>
Date: Mon, 14 Apr 2003 16:49:46 -0800
To: "louman01@aol.com" <louman01@aol.com>

Lou,

These are the salient terms as we see them

- Sealaska Corp (SC) retains 51% of CMGT. For this we commit to funding working capital needs of 950,000. This includes the upfront build out of the call center in the yet to be determined location.
- SC must see progress in two successive 4 month time periods for this commitment.
- Sealaska assumes the role of the CFO, including authority of the disbursements from the $950,000 bank account and accounting structures etc,
- Sealaska has 3 board seats of 5. The other two will include yourself plus an outside industry professional to be nominated by yourself.

I think the key issue for you to understand is the difference between the venture capital model of the $2 million commitment and our purchase. To the public you are now a subsidiary of a substantial company. I can see why the Hartford wanted to see this commitment if you were to be funded by the VC, they are not going to pony up additional funds. We feel EXTREMELY confident that the Hartford and others will see the benefit that CMGT now offers, especially with the minority advantage/federal procurement that Sealaska brings to the table. If they can't see this we move on. As Bill pointed out, I'd like to see the Hartford turn their back on a company with our connections on the hill.

As Bill stated, we need to see progression in the sale of the product in this time frame. If 4 months down the road we do not have any new lives under contract then the story we've been told by those in the industry and yourself was wrong. I don't feel this is the case and neither do you. I fully expect that we'll get this off the ground, it may take 10 months instead of 8. Like I've said many times, we will know in the first 4 months if we have a product. If you have any doubts just wait until you see Sealaska crank up the heat on the Federal side, this is what we do best and better than any other company in the country. Wait until you see Vikki and I crank up the diversity supply advantages to the Fortune 500. We will see this business ramp and it will be a success. If in fact we don't have the success we envision then it will be due to selling a faulty product. You know better than anyone that you're not selling a

lemon. If we don't see clients added in the first 4 months then something has gone seriously wrong. I don't see a scenario that will trigger this event, but if it does happen Sealaska has the option to cut our losses.

On the subject of Gary, Sealaska will pay the 6% of funding he is owed on the $950K. This is a contract that you entered into with him and we will honor that.

We are all committed to making this work and it will. While this is general frame work there are a lot of other details to work out. I look forward to seeing you tomorrow.

Best Regards,

patrick

Patrick W. Duke, CFA
Treasurer & Corporate Investment Officer
Sealaska Corporation
907.586.9208
907.723.7960 cell
907.586.2304 fax
patrick.duke@sealaska.com

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SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 9

Subject: MOIC update
From: "Gerry Spehar" <gspehar1@earthlink.net>
Date: Sun, 17 Aug 2003 11:24:23 -0700
To: "Baliga, Wayne" <wbaliga@wideopenwest.com>, "Franco, Lou" <Louman01@aol.com>, "Wong, Jim" <jim@wongknowles.com>

Gentlemen:

An update...spoke with Steve Hillard as planned Friday afternoon.

He reiterated that Madison "liked the guys and the idea" and that his group wanted to move forward with us but needed the assurances of a "big brother" strategic partner - in Steve's words his investors are "spoiled" by past deals and successes.

We discussed ways around losing minority status at exit so that big brother could be assured of going forward with a minority enterprise after the investors exit. He feels that Arctic Slope could and would want to stay involved as an ANC partner after investor exit (assuming good business reason to do so - i.e. solid cash flow) and that there is flexibility to structure a new 8(a) qualified entity with Arctic Slope at that point which would revenue share with big brother on a much different split (i.e. 80/20 or so) based on reinsurance treaties or other legit business reasons. So, simply put, big brother could use investor capital (albeit - expensive (25%) capital) for a short period to build the businsess, exit the investor group and run with the minority business.

Next step would be to nail down the pitch, identify 5 or so top-tier partner candidates and Council Tree would pitch them with us. Steve himself is tied up on another deal until Nov. but George would be committed to the project from CT.

CT cannot get involved with investors outside its present group and would not want to move forward with us while we simultaneously pitch Hicks Muse, but - as a friend - Steve would have no problem waiting for us to run with that effort and picking up with us if it didn't work. Given there are fewer moving parts (investors), a demonstrated interest in insurance and, presumably, no need for a big brother, he thought it made sense for us to give Hicks Muse a shot.

If we go the Hicks Muse route, Cook Inlet (CIRI) is a potential minority partner and our Siemens connection with many Tribes (and top-tier banks with mucho CRA $$ to invest) - could quickly surface others. I have an intro from Steve to CIRI and have already broached the general idea with Siemens for consideration by an NV tribe and their large bank partner.

I'd suggest an immediate phone meeting, choosing a course of action, and getting on with it ASAP...there are other issues looming which could complicate matters very quickly.

Let me know when you all can talk.

Gerry

Subject: GE Capital
From: "wayne baliga" <wbaliga@yahoo.com>
Date: Sun, 17 Aug 2003 09:58:32 -0700 (PDT)
To: "LOU FRANCO" <louman01@aol.com>, "Gerry Spehar" <gspehar1@earthlink.net>, "James Wong" <jim@wongknowles.com>

Gentlemen: I spoke with my G.E. contact regarding GE funding of the MOIC. However, they appear to be similar to MDP. They want a three to five year exit strategy a hurdle rate of return similar to MDP and would not be a long-term prospect for the MOIC. This got me to thinking about our overall strategy. A better play is to sell the MOIC concept to a Native American group as a substantial and successful long-term asset that at some point they will like to own 100%. This would leave us with an exit strategy and leave the investor with a successful first foray into the financial services industry. As Lou knows when he brokered Sea Alaska's insurance for free, the tribes are paying far too much for their insurance. As their assets continue to grow, which undoubtly they will, this problem will only get worse. The investor kills four birds with one stone through the MOIC:

1. It get's all the gov. advantages as a MOIC.
2. It solves the Native American Insurance problem
3. It has a platform for banking, brokerage, etc for the long-term. (I presume N.A. corp's have similar pricing gouging issue in these areas.
4. It utilizes existing assets such as call centers, land, buildings, etc. and creates jobs and equity for the Native community.

The proposal therefore, should be 51% or more of initial investment with 100% ownership in year 3-5. This also solves the status issue in year 3-5 (i.e. minority to non-minority under the current plan.)

I know everyone is busy with CMGT as we should be. However, I discussed this idea with Jim on Friday, and just wanted to memoralize my thoughts for reference when we return to the MOIC concept somewhere down the road.

Do you Yahoo!?
Yahoo! SiteBuilder - Free, easy-to-use web site design software

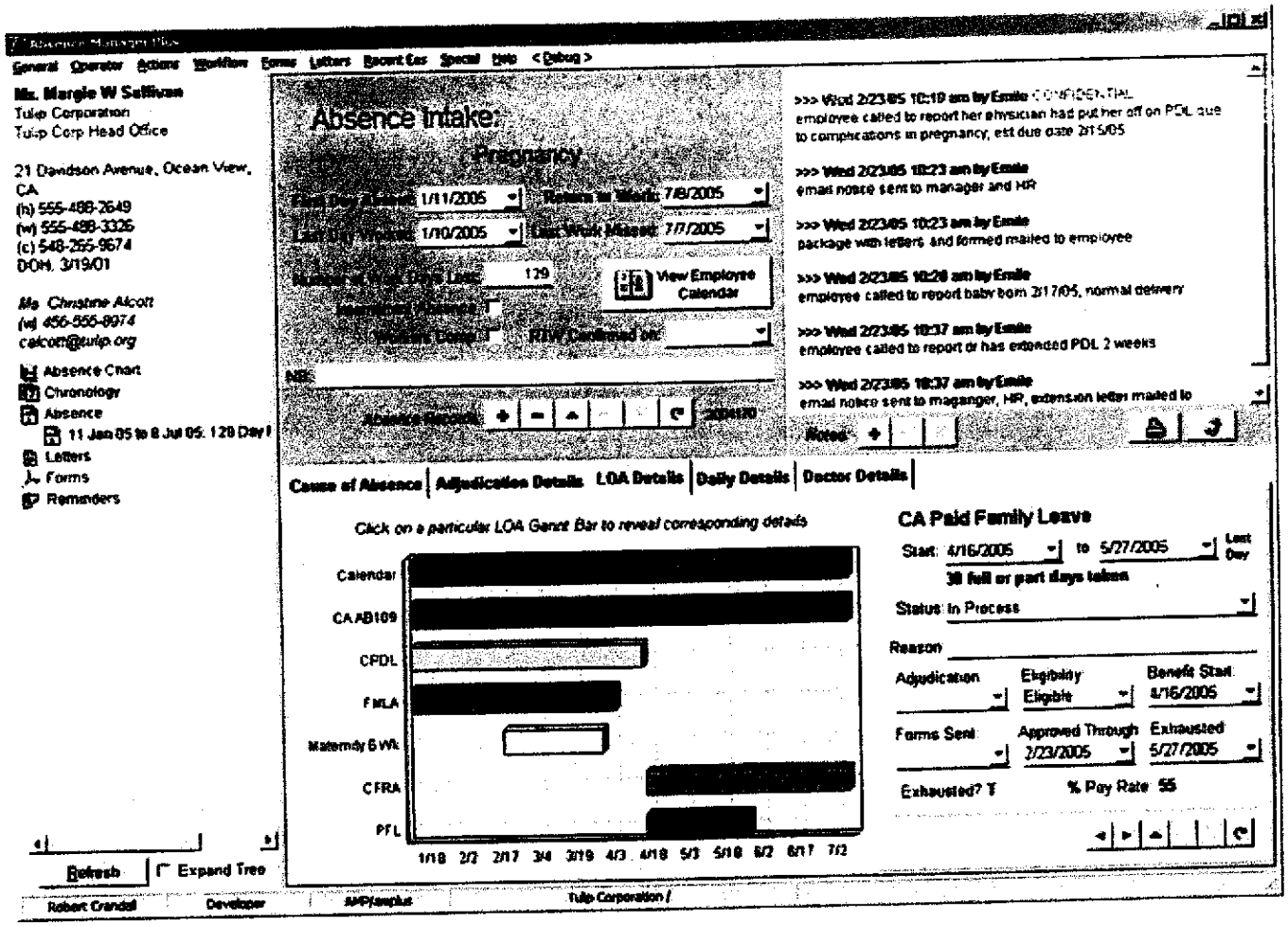
SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 10

ICS


Ms. Margie W Sullivan
Tulip Corporation
Tulip Corp Head Office
21 Davidson Avenue, Ocean View, CA
(h) 555-486-2649
(w) 555-488-3326
(c) 548-255-9674
DOH: 3/19/01
Ms Christine Alcott
(w) 456-555-8974
calcott@tulip.org
Absence Chart
Chronology
Absence
11 Jan 05 to 8 Jul 05: 128 Day
Letters
Forms
Reminders
Absence Intake:
Pregnancy
1/11/2005
7/8/2005
1/10/2005
7/7/2005
129
View Employee Calendar
>>> Wed 2/23/05 10:19 am by Emilie CONFIDENTIAL
employee called to report her physician had put her off on PDL due to complications in pregnancy, est due date 2/15/05
>>> Wed 2/23/05 10:23 am by Emilie
email notice sent to manager and HR
>>> Wed 2/23/05 10:23 am by Emilie
package with letters and formed mailed to employee
>>> Wed 2/23/05 10:28 am by Emilie
employee called to report baby born 2/17/05, normal delivery
>>> Wed 2/23/05 10:37 am by Emilie
employee called to report dr has extended PDL 2 weeks
>>> Wed 2/23/05 10:37 am by Emilie
email notice sent to maganger, HR, extension letter mailed to
Notes
Cause of Absence
Adjudication Details
LOA Details
Daily Details
Doctor Details
Click on a particular LOA Gantt Bar to reveal corresponding details
Calendar
CA AB109
CPDL
FMLA
Maternity 6 Wk
CFRA
PFL
1/18 2/2 2/17 3/4 3/19 4/3 4/18 5/3 5/18 6/2 6/17 7/2
CA Paid Family Leave
Start: 4/16/2005
to 5/27/2005
Last Day
38 full or part days taken
Status: In Process
Reason
Adjudication
Eligibility
Eligible
Benefit Start
4/16/2005
Forms Sent
Approved Through
2/23/2005
Exhausted
5/27/2005
Exhausted? T
% Pay Rate 55
Refresh
Expand Tree
Robert Crandall
Developer
Tulip Corporation

Contact Us

Employers/ Brokers/ Consultants

Phone: 800-965-1444
Fax: 818-347-4150
Email: clientservices@innovativecaresystems.com

Claimants

Email: benefits@innovativecaresystems.com
Phone: 800-965-1444
Disability Claim Fax: 310-328-4387

Mailing Address:
P.O. Box 11433
Torrance, CA 90510

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SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

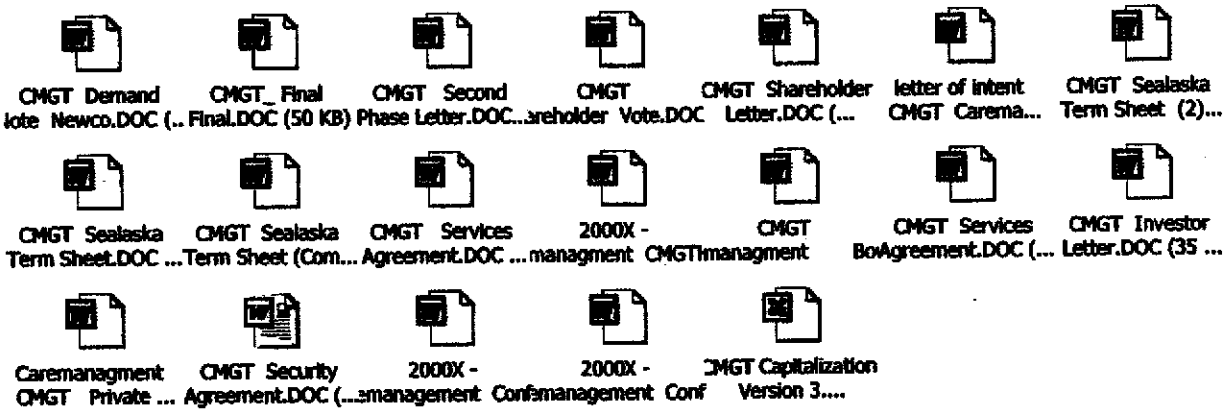
SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 11

Gerry Spehar

From: Given, Ronald B.
Sent: Saturday, November 27, 2004 12:48 PM
To: Given, Ronald B.
Subject: CMGT Security Agreement.DOC;CMGT Demand Note Newco.DOC;CMGT; Final Final.DOC;CMGT Second Phase Letter.DOC;CMGT Shareholder Vote.DOC;CMGT Shareholder Letter.DOC;letter of intent CMGT Caremanagment.DOC;CMGT Sealaska Term Sheet (2).DOC;CMGT Se

Attachments: CMGT Demand Note Newco.DOC; CMGT; Final Final.DOC; CMGT Second Phase Letter.DOC; CMGT Shareholder Vote.DOC; CMGT Shareholder Letter.DOC; letter of intent CMGT Caremanagment.DOC; CMGT Sealaska Term Sheet (2).DOC; CMGT Sealaska Term Sheet.DOC; CMGT Sealaska Term Sheet (Comments).DOC; CMGT Services Agreement.DOC; 2000X - Caremanagment CMGTHartford License V3.DOC; CMGT Caremanagment Bowers Resignation.DOC; CMGT Services Agreement.DOC; CMGT Investor Letter.DOC; CMGT Security Agreement.DOC; Caremanagment CMGT Private Placement.DOC; 2000X - Caremanagement Confidentiality CMGT Copyout.DOC; 2000X - Caremanagement Confidentiality CMGT Mutual.DOC



Ronald B. Given

Mayer, Brown, Rowe & Maw LLP
190 S. LaSalle Street
Suite 3132
Chicago, IL 60603-3441
Phone: (312) 701-7382
Fax: (312) 706-8137
Cell: (312) 286-5252
Res.: (312) 431-9952
Email: <<mailto:rgiven@mayerbrownrowe.com>>

Assistant to Ronald B. Given:

Evajean T. Bugajski
Phone: (312) 701-7632
Email: <<mailto:ebugajski@mayerbrownrowe.com>>

To: The Secured Parties referenced on the attached UCC Financing Statement

From: CMGT, Inc.

Date: December 1, 2003

Re: Security Agreement

This confirms that CMGT, Inc. has granted to the Secured Parties referenced on the attached UCC Financing Statement a security interest in all of CMGT, Inc.'s assets, including proceeds, whether now owned or hereafter acquired or coming into existence and wherever located, as security for any and all obligations of CMGT, Inc. to any of said Secured Parties, whether such obligations now exist or hereafter come into existence.

CMGT, INC.

By:_____
Its:_____

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 12

Gerry Spehar

From: Louman01@aol.com
Sent: Monday, December 15, 2003 5:35 PM
To: Given, Ronald B.
Cc: James Wong,CPA
Subject: Re: Gerry Spehar lawsuit against CMGT

In a message dated 12/15/2003 12:07:15 PM Central Standard Time, RGiven@mayerbrownrowe.com writes:

> Would you send me a list of the names of the shareholders and know creditors.
>
> -----Original Message-----
> **From:** Louman01@aol.com [mailto:Louman01@aol.com]
> **Sent:** Monday, December 15, 2003 11:05 AM
> **To:** wbaliga@yahoo.com; Wayne Baliga
> **Cc:** James Wong,CPA; Given, Ronald B.
> **Subject:** Gerry Spehar lawsuit against CMGT
>
> Wayne:
>
> Attached is the latest legal papers CMGT received from Gerry's attorneys, including the Denver lawyers' Pro Hoc Vice representation in LA Court, the clarifying his multiple "causes of actions," intent to name "Does 1-100," etc., and setting of a Hearing in LA on 1/2/2004..
>
> Regards,
>
> Lou
>
> Louis J. Franco
> 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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Ron:

I sent the investor/shareholder listings via my previous e-mail. I'll confirm with Jim Wong 1st thing in the AM re: list of known creditors so we can itemize shareholder & non-shareholder noteholders (i.e., Dell) & regular service creditors (i.e., AT&T Canada, UPS, etc.) & amounts involved and advise you.

Regards,

Lou

6/7/2010

SPEHAR JUNE 10, 2010 SUPPLEMENT

TO

SPEHAR APRIL 28, 2010 MOTION TO ALTER OR AMEND

EXHIBIT 13

Gerry Spehar

From: Bugajski, Eva jean
Sent: Wednesday, December 31, 2003 12:31 PM
To: Louis J. Franco (E-mail)
Cc: Given, Ronald B.
Subject: UCC Filing Schedule

Attachments: CMGT.PDF

CMGT.PDF (19 KB)

Mr. Franco:

Please see attached:)

I would like to also wish you and your family a very Happy and Healthy New Year

Eva
Evajean T. Bugajski
Secretary to Ronald B. Given
MAYER, BROWN, ROWE & MAW LLP
190 South LaSalle Street
Chicago, Illinois 60603
Phone: (312) 701-7632
Fax: (312) 701-7711
Email: <mailto:ebugajski@mayerbrownrowe.com>

UCC FILING SCHEDULE

Debtor: ***CMGT, Inc.***

Secured Parties:
Ross, Richard M.
Holman, Linda
Holman, Ron
Levine, Jan
Hollins, Byron
Trautner, Charles W.
Baliga, Wayne J.
Rask, Lee
Reed-Egly, Inc.
Carroll, R. Leonard
Ross, John S.
Quarles, Rob
Quarles, Kim G.
Regan, Kevin W.
Donwen, William J.
Spaeth, Melvin
Wong, James M.
Wong, Celia
Garner, Catherine H.
Franco, Louis J.
Walker, William W.
Di Benedetto, Deborah V.
Jackson, Craig L.
Crandall, Robert C.

Jurisdiction	Filing Date	File Number
Secretary of State of Delaware	12/17/2003	3333439 1
Secretary of State of Illinois	12/18/2003	7989628

8989218 00623221