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FILED

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

JUL 26 2010 NF

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

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

Plaintiff,)

v.)

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

Defendants.)

No. 06 C 5486

Judge Virginia M. Kendall

**AFFIDAVIT OF RONALD HOLMAN TO SUPPLEMENT PREVIOUSLY-FILED
LIMITED RATIFICATION**

2010 JUL 26 AM 10:11
JUNIOR COURT
U.S. DISTRICT COURT

This Affidavit was originally prepared by R. Gerard Spehar ("Spehar") based on our conversations and communications, and I reviewed & adjusted it, so this Affidavit represents my understanding. I, Ronald Holman, swear and affirm under oath and intending to be bound that I have carefully reviewed its contents, and that the following statements are true and correct:

1. I am a resident of the State of California and am over twenty-one (21) years of age. I have personal knowledge of the facts set forth in this Affidavit and, if called as a witness, could and would competently testify to the matters set forth herein.

2. I am the CEO of The Holman Group. The Holman Group has been in business for over 30 years providing a full array of managed-care and behavioral health services

for employers, associations, and trusts. The Holman Group was established in 1979 and now delivers Health Care to over 600 Employer groups globally.

3. In or about 2001, my wife and I invested a total of \$200,000 in CMGT, Inc. ("CMGT"). We first invested \$100,000 in CMGT's convertible debentures, which made us CMGT shareholders and eventually secured creditors of CMGT's bankruptcy estate ("Estate") in that amount. We then loaned another \$100,000 to CMGT, and therefore we are also unsecured creditors of the Estate in that amount. We wish to recover our \$200,000 investment in CMGT, if possible.

4. On March 31, 2010, this Court issued a final Opinion and Order dismissing this malpractice action in its entirety ("2010 Opinion"). I have read the 2010 Opinion.

5. On April 28, 2010, Spehar filed a Motion to Alter or Amend the 2010 Opinion ("Spehar Motion"). I have read the Spehar Motion and Exhibits, including Spehar's Affidavit (Exhibit 1).

6. On May 4, 2010, my wife and I filed a Limited Ratification ("Ratification") of the Spehar Motion. Our Ratification informed the Court that there are other legitimate claimants against the Estate besides Spehar, including ourselves, who have an interest in this matter, that there is a potential \$1.6 million recovery due those other claimants, and that those other claimants are materially harmed by the Court's dismissal of this matter before trial. Our Ratification asked the Court to set this matter for trial so that the truth could be discovered and those other claimants might potentially recover their claims.

7. Our Ratification also informed the Court that CMGT was not a startup. I invested in CMGT because CMGT was ahead of its time in providing the *Absence Expert* tracking software it owned and its professionally-staffed *First In Touch* call center business

model. Prior to its demise, CMGT had been operating for several years, had signed up several significant partners and clients, was delivering services to those clients, had MANY interested new clients and had several national Insurance Brokers interested in CMGT, which is where much of the new business comes from for these kind of products. CMGT's software was a 'MUST HAVE' for ALL employers with 250 employees or more, and the upside to CMGT's already operating business was huge. I know this because I deliver Health Care to some 600 Employer groups, interact with these companies' Human Resource departments, Insurance Brokers and understand the kind of event tracking that every company's Human Resource department 'MUST' do in order to be compliant with the many State & Federal Laws, on an ongoing basis.

8. What happened to CMGT was a real tragedy for its shareholders, creditors, it's customers and potential customers. Whether or not Spehar's judgment is valid, CMGT's other investors and creditors deserve to at least potentially recover from our share of CMGT's lost profits.

9. On June 10, 2010, Spehar filed a Supplement to the Spehar Motion ("Spehar Supplement"), which included a Consolidated Chronology of Key Events In The SC-CMGT Dispute And The California Litigation ("Chronology"). I have read the Spehar Supplement, its Chronology and its Exhibits that are referred to below.

10. As noted above, I was a major CMGT shareholder and creditor during the entire time period covered by the Chronology (January 2003 through May 2004), and from my own personal experience and knowledge I hereby state and affirm:

- a. Neither Franco nor Defendant Ronald Given ("Given"), nor anyone else associated with CMGT, ever informed me that Harlan Smith ("Smith")

was a principal investor in CMGT's disputed Newco deal ("Newco"), or that Spehar was "in the loop" with Smith and Newco. (Chron. ¶¶ 2, 6, 11, 12, 15 and 22) I first learned of Smith's existence and involvement in Newco from the Spehar Motion and Affidavit.

- b. At no time either in or after April 2003, did Franco, Given or anyone else associated with CMGT ever inform me that Franco, Spehar and CMGT shareholders Jim Wong and Wayne Baliga had formed Millennium Partnership ("MP"), with Given as their counsel, to pursue an MOIC deal that would have also funded CMGT. (Chron. ¶¶ 4, 13, 16, 19 and 22) I first learned of the MOIC/CMGT deal from trustee David Grochocinski's ("Grochocinski") August 2006 complaint in this matter. I first learned of Counsel Tree Communications' and Madison Dearborn Partners' interest in funding MOIC and CMGT, and of their August 1, 2003 meeting with MP and Defendants, from the Spehar Motion, Affidavit and Supplement.
- c. Exhibit 4 to the Spehar Supplement is Franco's May 7, 2003 rejection letter to Sealaska (Chron. ¶6), which states: "As is my duty, I will present your Term Sheet dated 5-01-03 to my shareholders." To the best of my recollection and knowledge, Franco never present Sealaska's 5-01-03 Term Sheet to me or other shareholders for our vote, either before or after Sealaska terminated its interest in CMGT on May 13, 2003. (Chron. ¶9)
- d. In May 2003, neither Franco nor Given nor anyone else associated with CMGT ever informed me that CMGT was also considering Newco, while at the same time rejecting Sealaska's equivalently-priced Term Sheet.

(Chron. ¶10) Had I known this, and had I been given the opportunity to vote between those two deals, I would have voted to accept Sealaska's Term Sheet rather than Newco. That is because, unlike Newco, Sealaska's deal was dispute free, it left CMGT with 49% of the company (versus 20% with Newco), and it fully paid CMGT's creditors (including my wife and me). Also, Sealaska had already done extensive due diligence on CMGT and, from what I now know, it appears Sealaska would have been a committed and much stronger business partner for CMGT going forward. (Chron. ¶¶ 5-10)

- e. I first learned of Newco from Franco's August 7, 2003 letter to shareholders, which stated "This is a deal we should and must do. There are no alternatives." (Chron. ¶14)
- f. Neither Franco nor Given nor anyone else associated with CMGT ever informed me that the Washoe Tribe ("Washoe") were also very interested in funding CMGT, that CMGT had pre-approved a \$2.5 million LOI which was sent to the Washoe on August 14, 2003, or that the Washoe had then actually committed to signing that LOI on August 29, 2003 and had returned it for CMGT's sign-off on their immaterial changes on September 2, 2003 before commencing due diligence. (Chron. ¶¶ 17-19, 23 and 25-28)
- g. On August 15, 2003, Franco asked CMGT shareholders to vote to approve Newco (Chron. ¶19), and on August 27, 2003 Franco then informed us

that a majority had voted to approve Newco (Chron. ¶22). When voting on Newco, I had not been told and therefore did not know:

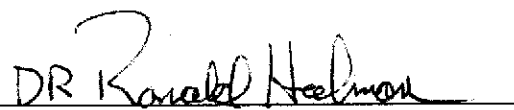
- Spehar was strongly disputing Newco because CMGT refused to pay him (Chron. ¶15),
- Spehar's payment claim likely had merit because Smith was both a principal Newco investor and "in the loop" with Spehar (*see* "a" above),
- Given had advised Spehar to seek legal counsel v. CMGT if he wished to pursue his payment claim (Chron. ¶16),
- There was little chance that CMGT would settle the Spehar dispute (Chron. ¶20),
- There were other investors besides Newco who were dispute-free and also interested in funding CMGT under much better terms than Newco (Chron. ¶13 and 17-18), and
- Given had solicited a \$100,000 payment from Newco and advised Newco that, because of the Spehar dispute, it could "walk away with the software and, most importantly, Lou Franco without making any payment to CMGT whatsoever." (Chron. ¶21)

h. I first learned that Spehar disputed Newco from Franco's August 27, 2003 letter to shareholders informing us that we had approved Newco. Based on Franco's characterization of the Spehar/CMGT dispute in that letter, I did not believe it posed a risk to Newco and I thought Newco would close.

- i. Had CMGT shareholders known all of the withheld information listed in paragraph "g" above when voting on Newco, I would not have voted for Newco and I do not believe a majority would have voted to approve Newco. Knowing the true risk to Newco from the Spehar dispute, and knowing that there were dispute-free alternatives with better terms available, I believe shareholders would have instead voted to pursue an alternative such as the Washoe LOI.
- j. Neither Franco nor Given nor anyone else associated with CMGT ever informed me, on September 1, 2003 or at anytime thereafter, that "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," that the degree of risk of Spehar taking legal action was "high," or that the "likelihood of settlement is likely or even unknown if legal action is taken against CMGT, keeping me in the dark" (Chron. ¶24)
- k. I was not asked to contribute money to defend CMGT against Spehar's California lawsuit. To the contrary, I was led to believe that defending against Spehar would be pointless and a waste of time and money, and that the UCC-1 statements that Franco and Given filed for shareholders in December 2003 would protect at least our \$100,000 initial investment in CMGT if Spehar obtained a default judgment against CMGT. (Chron. 34, 35, 40, 47-50 and 55).

11. The letter I wrote to Grochocinski against Spehar (2010 Opinion at 25), which other shareholders also did, was represented to me as being actually prepared by Franco and Mayer Brown. Unknown to me (and likely to other shareholders who wrote letters to Grochocinski), it now appears most likely that Mayer Brown and Franco may have made some behind the scene deals which put money in their pockets (Chron. ¶¶ 21, 31 and 37), with nothing going to CMGT's shareholders and creditors. I now suspect that what we were told was to unknowingly position shareholders/creditors to support possible fraud on the part of Mayer Brown and Franco.
12. At this point, I believe it is possible that the Court made its decision without having all the facts. Having lost \$200,000 in CMGT, I want this matter to go to trial where hopefully the whole truth will come out, and maybe some money will come back to my wife and me. I know of no other way to get any of our money back.

FURTHER AFFIANT SAYETH NAUGHT


Dr. Ronald Holman, CEO
The Holman Group
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Northridge, CA 91324

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

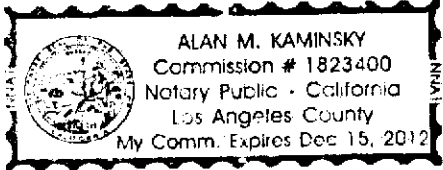
State of California

County of LOS ANGELES }

On July 23 2010 before me, ALAN M. KAMINSKY NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared RONALD HOLMAN
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature Alan M. Kaminsky
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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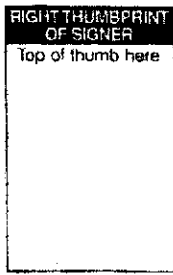
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

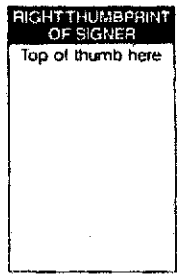
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CERTIFICATE OF SERVICE

I, Ronald Holman, certify that I caused a copy of the attached *Affidavit Of Ronald Holman To Supplement Previously-Filed Limited Ratification* to be served on the parties listed below, by fax and/or by depositing with the United States Post Office in Van Nuys, California, postage prepaid, prior to 6:00 p.m. this 26th day of July, 2010.

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