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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DAVID GROCHOCINSKI,

Case No. 1:06-cv-05486

Plaintiff,

Chicago, Illinois

v.

May 6, 2010

Status Conference

MAYER BROWN ROWE & MAW LLP,  
et al.,

Defendant.

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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Edward T. Joyce & Associates P.C.  
By: Arthur W. Aufmann  
135 S. LaSalle St., Ste. 2200  
Chicago, IL 60603  
(312) 641-2600

- and -

Myers Carden & Sax, LLC  
By: David E. Morgans  
30 N. LaSalle St., Ste. 2200  
Chicago, IL 60602  
(312) 345-7250

For a copy of this transcript, contact April Metzler, CRR  
at (312) 408-5154

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**APPEARANCES (Cont'd) :**

**For the Defendant:** Novack & Macey LLP  
By: Steven J. Ciszewski  
100 N. Riverside Plaza, Ste. 1500  
Chicago, IL 60606  
(312) 419-6900

**For the Movant:** Gerard Spehar  
1625 Grandview Avenue  
Glendale, CA 91201  
(818) 247-0616  
- pro se -

**COURT REPORTER:** FEDERAL OFFICIAL COURT REPORTER  
April M. Metzler, RPR, CRR, FCRR  
219 South Dearborn St., Rm. 2318-A  
Chicago, IL 60604  
(312) 408-5154  
April\_Metzler@ilnd.uscourts.gov

**Proceedings recorded by mechanical stenography; transcript produced by notereading.**

09:40:45 1 (Commenced at 9:40 a.m.)

09:40:45 2 THE CLERK: 06C5486, Grochocinski versus Mayer,

09:40:54 3 Brown, Rowe and Maw.

09:40:54 4 MR. CISZEWSKI: Good morning, your Honor. Steven

09:40:56 5 Ciszewski, C-i-s-z-e-w-s-k-i, for defendant Mayer, Brown.

09:41:00 6 THE COURT: Okay. Good morning.

09:41:01 7 MR. AUFMANN: Good morning, your Honor. Arthur

09:41:03 8 Aufmann, one of the attorneys for the trustee.

09:41:05 9 THE COURT: Okay. Good morning.

09:41:07 10 MR. SPEHAR: Gary Spehar.

09:41:08 11 THE COURT: Good morning.

09:41:09 12 MR. SPEHAR: Good morning.

09:41:10 13 MR. MORGANS: Good morning, Judge. My name is David

09:41:12 14 Morgans, M-o-r-g-a-n-s. And on Tuesday I filed a motion for

09:41:16 15 leave to appear on behalf of Mr. Grochocinski in this case,

09:41:20 16 which I noticed for Monday.

09:41:21 17 THE COURT: Right. I saw that, and that's fine. You

09:41:24 18 can appear for him individually, I assume.

09:41:26 19 Is there any difficulty with that from anyone else?

09:41:29 20 MR. CISZEWSKI: Not at all.

09:41:30 21 MR. AUFMANN: No, your Honor.

09:41:30 22 THE COURT: All right. So I'll grant you leave to

09:41:32 23 appear. You don't need to come in on Monday.

09:41:34 24 MR. MORGANS: Thank you.

09:41:35 25 THE COURT: Now, I have a number of motions, as you

09:41:38 1 all know, and I'm sure you've had a chance to read.

09:41:41 2 The first one is on the motion to alter or amend, and  
09:41:46 3 that is filed by Mr. Spehar, who's acting pro se, and that  
09:41:52 4 only comes into play if he is allowed to intervene in the  
09:41:56 5 matter. So I've looked at some of the intervention law, but  
09:42:00 6 I'm curious as to whether either Mayer, Brown or the trustee  
09:42:05 7 wants to have a position paper regarding his motion to  
09:42:09 8 intervene.

09:42:10 9 So who wants to respond to that?

09:42:13 10 MR. CISZEWSKI: Yeah, Judge, for Mayer, Brown, we  
09:42:15 11 would. We think there's no basis for the intervention --

09:42:18 12 THE COURT: Okay.

09:42:21 13 MR. CISZEWSKI: -- for a number of reasons, and we  
09:42:21 14 would -- we will put that in writing, if that'll assist the  
09:42:23 15 Court.

09:42:23 16 THE COURT: Okay. And what do you believe is the  
09:42:25 17 reason for there to be lack of intervention?

09:42:28 18 MR. CISZEWSKI: I think there's at least a couple of  
09:42:30 19 reasons, there may be more, but two that, you know, we know  
09:42:33 20 exist for certain are that this is too late. Mr. Spehar's  
09:42:38 21 known about this case for some time. He was even deposed in  
09:42:39 22 this case, and there was absolutely no reason for waiting  
09:42:43 23 until the eleventh and a half hour, I mean, after the case is  
09:42:46 24 over for trying to intervene if he thought he had some rights  
09:42:49 25 that were at stake, so that's number 1.

09:42:52 1 The second reason would be is he doesn't have a  
09:42:54 2 sufficient interest here to intervene. The only thing he's  
09:42:58 3 really complained about is what was stated in your judgment  
09:43:00 4 about his reputation and things like that. And based on the  
09:43:04 5 case law we've reviewed thus far, we don't believe that that  
09:43:08 6 presents a sufficient interest for an intervention.

09:43:10 7 THE COURT: Okay. Did you want to respond to that on  
09:43:15 8 behalf of Mr. Spehar, since I have permitted you to represent  
09:43:17 9 him?

09:43:17 10 MR. MORGANS: Mr. Grochocinski.

09:43:18 11 THE COURT: Oh, you're Grochocinski. I'm sorry.

09:43:20 12 MR. MORGANS: No, Judge. I don't have a position on  
09:43:21 13 that.

09:43:22 14 THE COURT: You don't have a position? Okay.

09:43:23 15 MR. MORGANS: I defer to counsel who has been in  
09:43:25 16 place on the case so far.

09:43:27 17 THE COURT: Okay. Well, you're not in here yet.

09:43:30 18 MR. SPEHAR: Okay.

09:43:30 19 THE COURT: But I have read your paper --

09:43:32 20 MR. SPEHAR: Okay.

09:43:33 21 THE COURT: -- so let me just give you some of my  
09:43:36 22 initial reactions, but I'm going to let Mayer, Brown respond  
09:43:40 23 to it, and then I'll give you a reply to Mayer, Brown's  
09:43:43 24 position.

09:43:44 25 MR. SPEHAR: Okay. Thank you.

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THE COURT: So --

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MR. SPEHAR: I appreciate it, your Honor.

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MR. AUFMANN: You know, Judge, there might be one

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thing I might add I'm not sure if you're not aware of --

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THE COURT: Oh, okay.

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MR. AUFMANN: -- in thinking this through.

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The trustee in the bankruptcy court proceeding is

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going to be pursuing a motion to abandon the claim. And the

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idea being that if one or more creditors want to then take up

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the claim and perhaps pursue an appeal of your Honor's ruling

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that they would then have the opportunity to do that.

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So because that motion is not going to be heard in

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the bankruptcy court until, I believe, May 7th, that's --

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MR. SPEHAR: That's now been extended.

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MR. AUFMANN: Pardon me?

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MR. SPEHAR: It's now been continued for three weeks.

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MR. AUFMANN: Okay. Okay. It's now even continued

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beyond May 7th. Because that motion is not going to heard in

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the bankruptcy court until after the time within which to file

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a notice of appeal, the trustee filed a notice of appeal to

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preserve that. He didn't want to -- the trustee didn't want

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to have a situation where someone comes in and says, Well, I'd

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like to take over the claim. Oh, there's been a summary

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judgment entered. Oh, I want to appeal it, and now the time

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to appeal has run.

09:44:51 1 So the trustee, to protect creditors who might want  
09:44:55 2 to take over the claim, that's why he filed the notice of  
09:44:57 3 appeal. The trustee himself is not pursuing the appeal. I  
09:45:02 4 just wanted to preserve it, if one or more creditors wanted to  
09:45:06 5 do that. So I just wanted to let you know that that's sort of  
09:45:09 6 a procedural scenario.

09:45:10 7 THE COURT: Yes. It's a little chess match right  
09:45:14 8 now. I'm trying to figure out how that will impact the issues  
09:45:16 9 that I have first. Mr. Spehar's issue is the first one we  
09:45:18 10 need to address, which is whether he can be here, and I don't  
09:45:21 11 think that will necessarily impact the intervention.

09:45:24 12 MR. AUFMANN: I'm not sure it will either. I just  
09:45:25 13 wanted to make sure you were aware of that. That's sort of  
09:45:28 14 the lay of land.

09:45:28 15 THE COURT: No, thank you, I appreciate that.

09:45:30 16 MR. MORGANS: Judge, I would like to say one thing on  
09:45:32 17 the appeal, that it is filed by the trustee who's the  
09:45:34 18 plaintiff in the case. And there is a motion to abandon, but  
09:45:38 19 the motion hasn't been heard, hasn't been granted, so it can't  
09:45:41 20 be assumed --

09:45:42 21 THE COURT: Understood.

09:45:42 22 MR. MORGANS: -- that the trustee will not be the one  
09:45:44 23 pursuing the appeal.

09:45:45 24 THE COURT: Right, I understand that.

09:45:49 25 Okay. Okay. Well -- okay. So I can see how that

09:45:53 1 would play out with Mr. Spehar.

09:45:55 2 Well, let's look at Rule 24, which is the rule that

09:45:58 3 we have for intervention, and you're all going to brief it.

09:46:01 4 There's the intervention of right, and there's the permissive

09:46:04 5 intervention. So the intervention of right, I think -- tell

09:46:07 6 me your name from Mayer, Brown, Ciszewski?

09:46:09 7 MR. CISZEWSKI: Ciszewski, yes.

09:46:10 8 THE COURT: All right. Mr. Ciszewski is saying,

09:46:13 9 first, you're untimely, which would be one of the factors, is

09:46:16 10 that you need to assert yourself into it in a timely fashion.

09:46:19 11 And then, secondly, whether or not you have an interest

09:46:23 12 related to the property or transaction, and there is case law

09:46:27 13 from the Seventh Circuit talking about whether or not

09:46:32 14 someone's injury to their reputation --

09:46:35 15 MR. SPEHAR: Okay.

09:46:35 16 THE COURT: -- is sufficient interest for

09:46:37 17 intervention of right, and that is responded to in this

09:46:41 18 Circuit and others as in the negative. So intervention of

09:46:45 19 right, I think, is an uphill climb for you, but that doesn't

09:46:49 20 mean you can't still seek it.

09:46:51 21 On the other hand, the permission -- permissive

09:46:54 22 intervention is discretionary on my part, and so we would be

09:47:00 23 focusing more on the factors in the permissive intervention --

09:47:04 24 MR. SPEHAR: Your Honor, if I may?

09:47:04 25 THE COURT: Sure.



09:47:05 1 MR. SPEHAR: Besides my reputation basis, on which I  
09:47:08 2 intervened, and that was my CFA credential.  
09:47:10 3 THE COURT: Your what?  
09:47:11 4 MR. SPEHAR: My Charter Financial Analyst credential.  
09:47:13 5 THE COURT: Oh, okay. So that --  
09:47:14 6 MR. SPEHAR: I will lose the credential.  
09:47:16 7 THE COURT: Okay.  
09:47:16 8 MR. SPEHAR: Yes, and that is very important to me.  
09:47:18 9 It is a physical ...  
09:47:20 10 THE COURT: Oh, I see, okay, like a property right.  
09:47:22 11 MR. SPEHAR: Yes.  
09:47:22 12 THE COURT: Okay. Interesting.  
09:47:23 13 All right. Well, let's get it on paper, so go ahead  
09:47:27 14 and give me your response.  
09:47:29 15 How long do you need, Mr. Ciszewski, to respond?  
09:47:32 16 MR. CISZEWSKI: Could I have 21 days?  
09:47:33 17 THE COURT: Sure. So 21 days. And then how long do  
09:47:35 18 you want for a reply, two weeks after that?  
09:47:38 19 MR. SPEHAR: That would be fine.  
09:47:38 20 THE COURT: Okay. So then fourteen days. That'll  
09:47:41 21 give me a fully briefed motion on intervention.  
09:47:44 22 And the motion to alter or amend then is entered and  
09:47:49 23 continued until I rule on whether you can intervene, because  
09:47:53 24 if you can't intervene, you don't have a dog in the fight in  
09:47:56 25 order to get it altered or amended. Okay.

09:47:58 1 MR. SPEHAR: Okay. May I, your Honor, at all address  
09:48:01 2 the Court, since you've made such findings about me and you  
09:48:04 3 don't know me --

09:48:06 4 THE COURT: Okay.

09:48:06 5 MR. SPEHAR: -- and I haven't had a voice in this?

09:48:07 6 THE COURT: Well, I know you from your papers, but  
09:48:10 7 not from you personally.

09:48:11 8 MR. SPEHAR: I know, your Honor. I would like you to  
09:48:13 9 know personally just about me a little bit.

09:48:15 10 I am not from la-la land, to begin with. I'm from  
09:48:20 11 Colorado. I'm from a ranching background, mining background.  
09:48:23 12 My handshake is golden. I have a daughter working at the  
09:48:27 13 University of Wisconsin. The -- my background in the  
09:48:30 14 securities industry began in 1981. I was, for twenty years,  
09:48:35 15 vice president of First Interstate Bank, which is the eighth  
09:48:38 16 largest bank in the United States, then Standard Charter Bank,  
09:48:42 17 then Alex Brown and Sons (phonetic), and then Morris  
09:48:45 18 Securities.

09:48:45 19 I have worked for and my clients have been in the  
09:48:48 20 State of Ohio, State of Michigan, State of California, many of  
09:48:52 21 the largest mortgage issuers in this country. I've testified  
09:48:55 22 before the Federal Reserve.

09:48:57 23 All of this is by way of telling you they are saying  
09:49:00 24 that I am worthless, that I could not raise capital for CMGT.

09:49:06 25 I want you to know that CMGT's CFO was a fellow by

09:49:10 1 the name of Mike Bauers (phonetic). The reason I got involved  
09:49:13 2 with CMGT was because Mike Bauers also cleared securities for  
09:49:17 3 me in my first iteration of CR Capital.

09:49:22 4 At that time I was trading personally with Goldman  
09:49:25 5 Sachs, with Bear Stearns, of which my brother was a senior  
09:49:28 6 managing director for Sullivan Brothers and with Mers  
09:49:32 7 Securities (phonetic).

09:49:32 8 This is by way of telling you that I have a very  
09:49:35 9 professional background. I'm capable of doing an IPO. I had  
09:49:40 10 already had discussions with Bear Stearns about doing an IPO  
09:49:44 11 for CMGT. Michael Bauers knew me very well and knew my  
09:49:48 12 trading and he begged me to come in and help CMGT. The  
09:49:52 13 environment you need to know about at that time was --

09:49:52 14 MR. CISZEWSKI: Your Honor, I'm going to object.  
09:49:54 15 Basically now we're getting into the motion to alter and  
09:49:56 16 amend, and he hasn't been given leave to intervene. And other  
09:50:00 17 than giving a personal background, I don't think he should be  
09:50:01 18 allowed to go further and talk about the substance of this.

09:50:04 19 THE COURT: Well, I gave him the permission to  
09:50:06 20 address the Court, so he can address the Court. I'm not going  
09:50:09 21 to cut him off.

09:50:10 22 MR. SPEHAR: Thank you, your Honor. I appreciate it  
09:50:12 23 very much.

09:50:12 24 I -- in 2000 we were coming out of the dot com bust,  
09:50:18 25 which devastated the capital markets, and we were heading

09:50:22 1 right in 2001 into 9/11. So that's the environment when  
09:50:26 2 capital markets were in very bad shape in which I came into  
09:50:30 3 CMGT. That's why it took so long.

09:50:33 4 I would like you to note that defendant, Given,  
09:50:37 5 reupped my contract and negotiated it in 2001. And in 2003  
09:50:41 6 defendant Given and Blega (phonetic) and Wong and Blega and  
09:50:45 7 Franco became my partners to raise a hundred million dollars  
09:50:49 8 in 2003, and defendant Given was my lawyer as our partnership  
09:50:52 9 counsel. So if they thought I was worthless, they never would  
09:50:56 10 have done that.

09:51:02 11 THE COURT: Well, these are issues that when, if I  
09:51:04 12 allow you to intervene, you can address. But, remember, even  
09:51:09 13 if you intervene, then you would need to be addressing it in  
09:51:12 14 such a way that you'd have to attack the judgment, based on  
09:51:18 15 new law or new facts, other than that was presented to me  
09:51:22 16 and --

09:51:22 17 MR. SPEHAR: -- motion to amend --

09:51:23 18 THE COURT: -- I had quite a bit of documentation  
09:51:28 19 before me to rule.

09:51:29 20 MR. SPEHAR: Yes.

09:51:30 21 THE COURT: So let's address it as it comes along.  
09:51:33 22 I'll take a look at your motion to intervene, and we'll get a  
09:51:37 23 fully briefed motion so that I can get into that. I see we've  
09:51:41 24 got some other issues moving along.

09:51:44 25 And anything from you, sir, that you are dealing with

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MR. MORGANS: Well, my job is to defend the motion for sanctions against Mr. Grochocinski.

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THE COURT: Okay. So now as far as that's concerned, I think we need to get a briefing schedule on that.

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So that's been filed. How long do you need to respond to that?

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MR. MORGANS: My request is for 28 days. I spoke to Mr. Novak about it yesterday, and he was agreeable if you are.

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THE COURT: Okay. So 28 days.

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MR. CISZEWSKI: And we'd like 21 days to reply after that.

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THE COURT: And 21 days to reply to that. Okay.

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That's on the motion for sanctions.

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And I think that's all that I have pending before me.

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MR. AUFMANN: Your Honor, there -- the motion for sanctions is also addressed to my firm.

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THE COURT: Oh, okay. So you're going to be on the same schedule then, I assume.

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MR. AUFMANN: Right. We'll be filing our own response. The same schedule is fine with me.

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THE COURT: Same schedule.

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MR. AUFMANN: I would ask, if your Honor would allow it, there's a lot of accusations made against my firm that are going to require a lot of detail in terms of fact -- laying

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09:52:49 1 out facts to rebut those, what I consider to be conclusory  
09:52:53 2 allegations. Could we have --

09:52:55 3 THE COURT: Those would be conclusory findings, as  
09:52:57 4 opposed to allegations.

09:52:59 5 MR. AUFMANN: Could I have a brief in excess of  
09:53:02 6 fifteen pages?

09:53:02 7 THE COURT: How long?

09:53:03 8 MR. AUFMANN: Twenty?

09:53:04 9 THE COURT: Okay.

09:53:05 10 MR. AUFMANN: Thank you.

09:53:05 11 THE COURT: That's fine.

09:53:06 12 MR. MORGANS: I'd like --

09:53:07 13 MR. CISZEWSKI: How would you like us logistically to  
09:53:10 14 handle the reply? Because we're now going to have two  
09:53:13 15 response briefs --

09:53:13 16 THE COURT: I think you probably want to do a reply  
09:53:18 17 separately. They have completely independent reasons and  
09:53:23 18 independent findings, so I would file two --

09:53:29 19 MR. CISZEWSKI: Okay.

09:53:30 20 THE COURT: -- separately.

09:53:31 21 MR. MORGANS: Judge, may I have twenty pages for mine  
09:53:34 22 as well?

09:53:34 23 THE COURT: Sure, you can. Okay.

09:53:36 24 MR. CISZEWSKI: And then that's -- I mean, we may --  
09:53:38 25 depending on if we need more space for the replies, we may --

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THE COURT: You can go up to twenty pages for your reply as well.

MR. CISZEWSKI: Thank you; thank you.

THE COURT: All right, folks. I think that's everything, so I'll see you shortly. Thank you.

MR. MORGANS: Thank you, Judge.

MR. CISZEWSKI: Thank you, your Honor.

MR. SPEHAR: Thank you, your Honor.

(Concluded at 9:53 a.m.)

- - -

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/April M. Metzler, RPR, CRR, FCRR May 6, 2010

April M. Metzler, RPR, CRR, FCRR Date

Official Federal Court Reporter