

privilege log before those documents are produced, so that any disputes about whether the asserted privilege applies to those documents can be resolved before the documents are produced.

3. On December 11, 2007, Defendants filed a response to Plaintiff's motion for protective order. In their response, Defendants argued that the work product doctrine does not apply to any documents relating to Plaintiff's pre-lawsuit "state of mind" or his investigation and analysis of his claims because he put his state of mind "at issue" when he responded to Defendants' motion to dismiss and motion for reconsideration.

4. On December 13, 2007, Judge Kendall referred this case to this Court for resolution of privilege issues.

5. On January 17, 2008, this Court entered a briefing schedule on privilege log issues. In that regard, the Court gave Plaintiff until February 20, 2008 to file an opening brief.

6. Because Defendants previously raised the "at issue" waiver doctrine, Plaintiff reasonably anticipates that Defendants will argue the application of that doctrine in response to Plaintiff's memorandum in support of his privilege log assertions.

7. Therefore, in his memorandum in support of his privilege log assertions, Plaintiff summarizes his claims in this case, the affirmative defenses asserted by Defendants in their motion to dismiss and motion for reconsideration, Plaintiff's responses to those defenses and Judge Kendall's ruling on Defendants' motion for reconsideration so that Plaintiff can explain why the "at issue" waiver doctrine does not apply here. In addition, Plaintiff explains why several categories of documents are protected by the attorney-client privilege and/or the work product doctrine.

8. Because of the relevant factual background that must be provided to address Defendants' "at issue waiver" argument and because of the number of categories of documents addressed in the memorandum, Plaintiff's current draft memorandum is 24 pages long. Plaintiff is still working on the draft and hopes to shorten it, but is reasonably anticipating that the final memorandum will be 24 pages long. Plaintiff has used (and continues to use) his best efforts to keep the memorandum as concise as possible.

9. If given leave to file an oversized memorandum, Plaintiff will include a table of contents with the pages noted and a table of cases pursuant to Local Rule 7.1.

10. Defendants have no objection to this motion provided that they are given the same number of pages for their response brief.

Wherefore, for all of the foregoing reasons, Plaintiff respectfully requests that this Court enter an order granting Plaintiff leave to file a 24 page memorandum in support of his privilege log assertions.

Dated: February 13, 2008

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

BY: /s/ Robert D. Carroll
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