

01-74-CD  
PAUL BRIAN ROEMER, M.D. -vs- CLEARFIELD PROFESSIONAL GROUP, LTD

01-74-CD



## Appeal Docket Sheet

Docket Number: 1420 WDA 2005

Page 2 of 2

August 16, 2005

Superior Court of Pennsylvania



## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
8/16/05	Notice of Appeal	60.00	60.00	2005SPRWD001016

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: July 8, 2005

Judicial District: 46

Date Documents Received: August 16, 2005

Date Notice of Appeal Filed: August 5, 2005

Order Type: Order Entered

OTN:

Judge: Reilly, Jr., John K.  
Senior Judge

Lower Court Docket No.: No. 01-74-CD No. 01-87-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
August 16, 2005	Notice of Appeal Filed	Appellant	Roemer, Paul Brian
August 16, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(C)

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

01-74-CD

**Paul Brian Roemer, MD**


VS.

**Clearfield Professional Group, LTD**

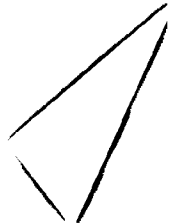
In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 42**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is  
SEP. 21, 2005.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

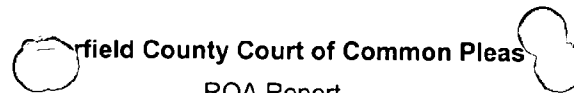




Date: 09/19/2005

Time: 11:01 AM

Page 1 of 3



Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-00074-CD

Current Judge: John K. Reilly Jr.

Paul Brian Roemer M.D vs. Clearfield Professional Group, LTD

Civil Other

Date		Judge
01/16/2001	Filing: Civil Complaint Paid by: Jason Mettley, Esquire Receipt number: 1816734 Dated: 01/16/2001 Amount: \$80.00 (Check) One Certified Copy to Sheriff One Certified Copy to Attorney Mettley	No Judge
01/23/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Costs: \$29.00	No Judge
02/20/2001	Preliminary Objections to Complaint, Filed by s/William L. Stang, Esq. Susan Brahm Gunn, Esq. Cert of Service no cc	No Judge
05/30/2001	Defendant's Withdrawal of Preliminary Objections to Complaint, filed by s/Susan Brahm Gunn, Esq. No CC	John K. Reilly Jr.
07/02/2001	Answer and New Matter of Clearfield Professional Group, Ltd. filed by s/Susan Brahm Gunn, Esq. 1 cc to atty	John K. Reilly Jr.
07/19/2001	Reply to New Matter. Filed by s/Jason Mettley, Esq. Cert of Svc 1 cc atty Mettley	John K. Reilly Jr.
10/11/2001	Stipulated Motion to Consolidate, filed by s/Jason Mettley, Esq. s/Susan Brahm Gunn, Esq. No CC Cases to be consolidated to 01-74-CD, 01-87-CD	John K. Reilly Jr.
10/15/2001	ORDER, filed 2 Cert. to Atty Gunn AND NOW, this 15th day of October, 2001, IT IS ORDERED, that the motion be, and the same hereby is, GRANTED.	John K. Reilly Jr.
07/31/2003	Praecipe for a Trial Date, filed by Atty. Gunn copy to C/A	John K. Reilly Jr.
08/01/2003	Motion For Summary Judgment In Part And In Whole Of Paul B. Roemer, M.D. filed by s/Jason Mettley, Esquire Certificate of Service 2 cc Atty Mettley	John K. Reilly Jr.
09/26/2003	Defendant's Cross Motion for Summary Judgment filed by Atty. Gunn. 1 CC to Atty.	John K. Reilly Jr.
10/02/2003	Appendix to Plaintiff's Motions for Summary Judgment, filed by Atty. Mettley No Cert. Copies (Also filed to 2001-87-CD)	John K. Reilly Jr.
12/16/2003	OPINION AND ORDER, NOW, this 16th day of December, 2003, re; Motions shall be and are hereby GRANTED in part and DISMISSED in part in accordance w/foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Attys: Kabala, Gunn, Mettley, and Stand	John K. Reilly Jr.
01/02/2004	Defendant's Motion For Continuance Of Trial To Spring Term. filed by, s/Sue Gunn, Esquire Stipulation of Counsel s/Jason Mettley, Esq. Certificate of Service no cc	John K. Reilly Jr.
01/09/2004	ORDER, NOW, this 7th day of January, 2004, re: Defendant's Motion for Continuance of Trial to Spring Term is DENIED. by the Court, s/FJA,P.J. 1 cc Atty Gunn	John K. Reilly Jr.
01/15/2004	ORDER, NOW, this 15th day of January, 2004, re: above-captioned matter shall be removed from the current list for jury trials and scheduled by the CA for trial w/o jury at the convenience of the parties. Pretrial conference scheduled for Jan. 15, 2004, shall be and is hereby CANCELLED. by the Court, s/JKR,JR., Senior Judge, Specially Presiding copies mailed to: Jason Mettley, Esq., Wm Stang, Esq and Carl Rychcik, Esq.	John K. Reilly Jr.
02/11/2004	Praecipe For Entry Of Appearance On Behalf Of Clearfield Professional Group, Ltd. filed by, s/Carl J. Rychcik, Esq. Certificate of Service no cc Copy to C/A	John K. Reilly Jr.
02/19/2004	Petition For Permission to File Amendment To Complaint and Request For Rule To Show Cause. filed by, s/ William L. Stang, Esq. 1 cc Atty	John K. Reilly Jr.

Date: 09/19/2005

Time: 11:01 AM

Page 2 of 3



field County Court of Common Pleas



ROA Report

User: BHUDSON

Case: 2001-00074-CD

Current Judge: John K. Reilly Jr.

Paul Brian Roemer M.D vs. Clearfield Professional Group, LTD

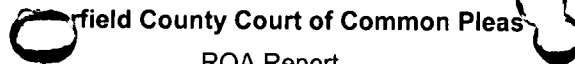
Civil Other

Date		Judge
02/19/2004	ORDER, AND NOW, to wit: this 19th day of February, 2004, Rule issued upon PAUL BRIAN ROEMER, M.D. Rule Returnable on the 8th day of March, 2004, for filing Written Response. by the Court, s/FJA, P.J. 1 cc to Atty	John K. Reilly Jr.
02/20/2004	Affidavit of Service, Order/Rule to Show Cause dated 19th day of February, 2004 and Petition/Motion for Permission to Amend Complaint filed 19th day of February, 2004 to be served on Plaintiff/Defendant Paul Brian Roemer, M.D. through JasonMettley, Esq. filed by, s/John Sughrue, Esquire Certificate of Service 3 cc to Atty	John K. Reilly Jr.
03/08/2004	Answer To Petition For Permission to File Amendment to Complaint. filed by, s/Jason Mettley, Esquire Verification s/Paul Brian Roemer, M.D. Certificate of Service 1 cc to Atty	John K. Reilly Jr.
03/11/2004	ORDER filed. AND NOW, this 10th day of March, 2004, it is the ORDER of the Court that argument on atty. Stang's Petition has been scheduled for March 24, 2004 before Judge Reilly. s/FJA 1CC to Atty. Stang, 1 CC to Atty. Mettley.	John K. Reilly Jr.
03/16/2004	Praecipe For Appearance on behalf of Clearfield Professional Group, LTD. s filed by, s/ John Sughrue, Esquire 3 cc Atty Sughrue	John K. Reilly Jr.
03/24/2004	ORDER, NOW, this 24th day of March, 2004, re: Petition for Permission to File Amendment to Complaint filed on behalf of Clearfield Professional Group, Ltd. is GRANTED. Clearfield Professional Group, Ltd. is directed to file said amended complaint forthwith. by the Court, s/JKR, JR., S.J., Specially Presiding cc to Attys, Mettley, Stang & Sughrue	John K. Reilly Jr.
03/26/2004	Amendment to Complaint. filed by, s/Carl J. Rychcik, Esquire Certificate of Service 1 cc to Atty	John K. Reilly Jr.
04/27/2004	ORDER, AND NOW, this 26th day of April, 2004, re: Civil Non-Jury Trial scheduled for Wed., July 14, 2004 and Thur., July 15, 2004 at 9:00 a.m. each day before Senior Judge Reilly. by the Court, s/FJA, P.J. 1 cc Attys Mettley, Rychcik and Sughrue	John K. Reilly Jr.
05/17/2004	Answer To Amendment to Complaint. filed by, s/Jason Mettley, Esquire Certificate of Service Verification s/Paul B. Roemer, M.D. no cc	John K. Reilly Jr.
06/24/2004	Notice to Attend, filed by Atty. Stang no cert. copy filed to 01-87-CD	John K. Reilly Jr.
07/15/2004	ORDER, filed. cert. to Atty's Mettley, Starg & Rychcik Now, this 14th day of July, 2004, RE: Findings of Fact and conclusions of law.	John K. Reilly Jr.
09/16/2004	Transcript of Proceedings with Exhibits, Civil Non-Jury Trial held before Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, July 14, 2004, filed.	John K. Reilly Jr.
09/29/2004	Certificate of Service of Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, M.D. was served upon counsel for the Defendant. No cc.	John K. Reilly Jr.
	Certificate of Service Defendant's Proposed Findings of Fact and Conclusions of Law filed by Atty. Rychcik	John K. Reilly Jr.
	Certificate of Service Defendant's Trial Brief was served upon Jason Mettley, Esq. filed by Carl J. Rychcik	John K. Reilly Jr.
12/09/2004	Finding of Fact, filed. Cert. to Atty's Mettley, Stang & Rychcik Order, Now, this 9th day of December, 2004, Partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.	John K. Reilly Jr.
12/20/2004	Plaintiff's Motion for Post-Trial Relief, filed by Atty. Mettley 1 Cert. to Atty.	John K. Reilly Jr.
12/30/2004	Clearfield Professional Group's Response To Roemer's Motion For Post-Trial Relief, filed by s/ William L. Stang, Esquire. No CC	John K. Reilly Jr.

Date: 09/19/2005

Time: 11:01 AM

Page 3 of 3



Clearfield County Court of Common Pleas

ROA Report

Case: 2001-00074-CD

Current Judge: John K. Reilly Jr.

Paul Brian Roemer M.D vs. Clearfield Professional Group, LTD

User: BHUDSON

Civil Other

Date		Judge
02/03/2005	Order, AND NOW, this 3rd day of February, 2005, Order that argument on Plaintiff's Motion for Post-Trial Relief has been scheduled for March 31, 2005, at 10:00 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding BY THE COURT: /s/John K. Reilly, Jr., S.J., Sp. Pres. One CC Attys: Mettley, Stang, Sughrue	John K. Reilly Jr.
03/22/2005	Order, AND NOW, this 22nd day of March, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief scheduled for March 31, 2005 at 10:00 a.m. is Continued. BY THE COURT: Fredric J. Ammerman, President Judge. 1CC Attys: Rycheck, Mettley.	John K. Reilly Jr.
05/20/2005	Order, AND NOW, this 20th day of May, 2005, it is the ORDER of the Court that argument on plaintiff's Motion for Post-Trial Relief has been scheduled for Thursday, May 26, 2005 at 9:00 a.m. in Courtroom No. 521, Allegheny County Courthouse, 436 Grant Street, Pittsburgh PA, before the Honorable Judge John K. Reilly. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC to C/A for Service	Fredric Joseph Ammerman
07/08/2005	Order, this 8th day of July, 2005, Plaintiff's Motion for Post Trial Relief is hereby dismissed in accordance with the Findings of Fact, Conclusions of Law and Opinion filed by this Court on December 9, 2004. By The Court, /s/ John K. Reilly, Jr., Senior Judge. CC to Atty j. Mettley, W. Stang, Ryckick, Sughrue	John K. Reilly Jr.
07/14/2005	Filing: Praeipe For Entry of Judgment on Decision in Non Jury Trial Paid by: Rychcik, Carl J. (attorney for Clearfield Professional Group, LTD) Receipt number: 1904790 Dated: 07/14/2005 Amount: \$20.00 (Check) Judgment in favor of Clearfield Professional Group, Ltd. and against Paul Brian Roemer in the amount of \$75,580.25. filed by s/Carl J. Rychcik, Esquire. 1CC & Notice to Atty. Mettley, Statement to Atty Rychcik	John K. Reilly Jr.
08/05/2005	Notice of Appeal, filed by s/Jason Mettley, Esq. One CC to Atty, One CC Superior Court with check for \$60.00	John K. Reilly Jr.
08/08/2005	Praeipe for Deposit of Security to Stay Execution, filed by s/Jason Mettley, Esq. One CC Atty	John K. Reilly Jr.
08/18/2005	Superior Court Appeal Docket Sheet, Docket Number 1420 WDA 2005, filed. No CC	John K. Reilly Jr.

I hereby certify this to be a true and attested copy of the original statement filed in this case.

SEP 19 2005

Attest.

*William D. Reilly*  
Prothonotary/  
Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 01-74-CD  
PAUL BRIAN ROEMER, M.D.  
VS.**

**CLEARFIELD PROFESSIONAL GROUP, LTD**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	01/16/01	Civil Complaint	27
02	01/23/01	Sheriff Return, Papers served on Defendant	01
03	02/20/01	Preliminary Objections to Complaint	06
04	05/30/01	Defendant's Withdrawal of Preliminary Objections to Complaint	03
05	07/02/01	Answer and New Matter of Clearfield Professional Group, LTD	33
06	07/19/01	Reply to New Matter	20
07	10/11/01	Stipulated Motion to Consolidate with Order filed October 15, 2001, Granted	05
08	07/31/03	Praecipe for a Trial Date	03
09	08/01/03	Motion for Summary Judgment in Part and in Whole of Paul B. Roemer, M.D.	06
10	09/26/03	Defendant's Cross Motion for Summary Judgment	06
11	10/02/03	Appendix to Plaintiff's Motions for Summary Judgment	Separate Cover
12	12/16/03	Opinion and Order, Motions Granted in part and Dismissed in part in accordance with opinion	03
13	01/02/04	Defendant's Motion for Continuance of Trial to Spring Term with Order filed January 9, 2004, Denied	06
14	01/15/04	Order, Re: case removed from jury trial list and scheduled for trial without jury	01
15	02/11/04	Praecipe for Entry of Appearance on behalf of Clearfield Professional Group, LTD	03
16	02/19/04	Petition for Permission to File Amendment to Complaint and Request for Rule to Show Cause	21
17	02/19/04	Order, Re: Rule issued upon Paul Brian Roemer for filing written response	01
18	02/20/04	Affidavit of Service, Order/Rule to Show Cause and Petition /Motion for Permission to Amend Complaint	02
19	03/08/04	Answer to Petition for Permission to File Amendment to Complaint	06
20	03/11/04	Order, Re: argument has been scheduled	01
21	03/16/04	Praecipe for Appearance on behalf of Clearfield Professional Group, LTD	02
22	03/24/04	Order, Re: Petition for Permission to File Amendment to Complaint Granted	01
23	03/26/04	Amendment to Complaint	19
24	04/27/04	Order, Re: Civil Non-Jury Trial scheduled	01
25	05/17/04	Answer to Amendment to Complaint	04
26	06/24/04	Notice to Attend	04
27	07/15/04	Order, Re: Findings of Fact and conclusions of law	01
28	09/16/04	Transcript of Proceedings with Exhibits, Civil Non-Jury Trial	Separate Cover
29	09/29/04	Certificate of Service, Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, MD	02
30	09/29/04	Certificate of Service, Defendant's Proposed Findings of Fact and Conclusions of Law	02
31	09/29/04	Certificate of Service, Defendant's Trial Brief	02
32	12/09/04	Order and Findings of Fact, partial judgments shall be entered in favor of both parties in accordance with the Opinion	17
33	12/20/04	Plaintiff's Motion for Post-Trial Relief	07
34	12/30/04	Clearfield Professional Group's Response to Roemer's Motion for Post-Trial Relief	07
35	02/03/05	Order, Re: argument on Plaintiff's Motion for Post-Trial Relief has been scheduled	01
36	03/22/05	Order, Re: argument on Plaintiff's Motion for Post-Trial Relief has been continued	01
37	05/20/05	Order, Re: argument on Plaintiff's Motion for Post-Trial Relief has been scheduled	01
38	07/08/05	Order, Re: Plaintiff's Motion for Post-Trial Relief is hereby dismissed in accordance with the Findings of Fact, Conclusions of Law, and Opinion filed December 9, 2004	01

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 01-74-CD**  
**PAUL BRIAN ROEMER, M.D.**  
**VS.**  
**CLEARFIELD PROFESSIONAL GROUP, LTD**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
39	07/14/05	Praecipe for Entry of Judgment on Decision in Non-Jury Trial	24
40	08/05/05	Notice of Appeal	06
41	08/08/05	Praecipe for Deposit of Security to Stay Execution	07
42	08/18/05	Superior Court Appeal Docket Sheet, Docket Number 1420 WDA 2005	02

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**Paul Brian Roemer, MD**

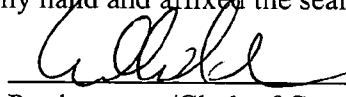
VS.

**Clearfield Professional Group, LTD**

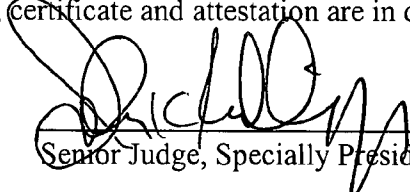
**01-74-CD**

So full and entire as the same remains of record before the said Court, at No. **01-74-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 19 Day of SEPT., 2005.

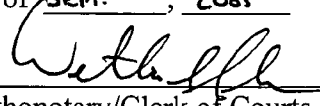
  
Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, Senior Judge, Specially Presiding, in the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
Senior Judge, Specially Presiding

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, Senior Judge, Specially Presiding, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Senior Judge, Specially Presiding, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 21 day of SEPT., 2005

  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 1420 WDA 2005

Superior Court of Pennsylvania

Page 1 of 2

August 16, 2005

Paul Brian Roemer, M.D., Appellant  
V.

01-74-CD

Clearfield Professional Group, LTD.

01-87-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 16, 2005

Awaiting Original Record



COPY

Journal Number:

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: August 30, 2005

Next Event Type: Original Record Received

Next Event Due Date: September 26, 2005

## COUNSEL INFORMATION

**Appellant** Roemer, Paul Brian  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellant Attorney Information:**

**Attorney:** Mettley, Jason  
**Bar No.:** 81966 **Law Firm:** Jubelirer, Pass & Intrieri, P.C.  
**Address:** 219 Ft Pitt Boulevard  
 Pittsburgh, PA 15222-1570  
**Phone No.:** (412)281-3850 **Fax No.:** (412)281-1985  
**Receive Mail:** Yes  
**E-Mail Address:**  
**Receive E-Mail:** No

Dr. 8-1001-87-CD  
**FILED** No  
 0112:5481 CC  
 AUG 18 2005  
 William A. Shaw  
 Prothonotary/Clerk of Courts

**Appellee** Clearfield Professional Group, LTD.  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:**

**Appellee Attorney Information:**

**Attorney:** Rychcik, Carl Joseph  
**Bar No.:** 73754 **Law Firm:** Fox-Rothschild, LLP  
**Address:** 625 Liberty Ave 29th Fl  
 Pittsburgh, PA 15222  
**Phone No.:** (412)394-5549 **Fax No.:** (412)391-6984  
**Receive Mail:** Yes  
**E-Mail Address:**  
**Receive E-Mail:** No

## Appeal Docket Sheet

Docket Number: 1420 WDA 2005

Page 2 of 2

August 16, 2005

Superior Court of Pennsylvania



## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
8/16/05	Notice of Appeal	60.00	60.00	2005SPRWD001016

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: July 8, 2005

Judicial District: 46

Date Documents Received: August 16, 2005

Date Notice of Appeal Filed: August 5, 2005

Order Type: Order Entered

OTN:

Judge: Reilly, Jr., John K.  
Senior Judge

Lower Court Docket No.: No. 01-74-CD No. 01-87-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
August 16, 2005	Notice of Appeal Filed		
		Appellant	Roemer, Paul Brian
August 16, 2005	Docketing Statement Exited (Civil)		
Western District Filing Office			



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,

Plaintiff

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant

) CIVIL DIVISION

)

) No. 01-74-CD

) No. 01-87-CD

)

) PRAECIPE FOR DEPOSIT OF SECURITY

) TO STAY EXECUTION

)

) Code:

)

Filed on behalf of Plaintiff

Counsel of Record:

Jason Mettley, Esquire

Pa. I.D. #81966

Jubelirer, Pass & Intrieri, P.C.

Firm #141

219 Fort Pitt Boulevard

Pittsburgh, Pennsylvania 15222

412-281-3850

019-001-87-CD

**FILED**

AUG 08 2005

me/3130/1

William A. Shaw  
Prothonotary

1 CENT TO ATT

#41

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	No. 01-74-CD
	)	No. 01-87-CD
CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Defendant	)	

**PRAECIPE FOR DEPOSIT OF  
SECURITY TO STAY EXECUTION**

TO: William Shaw, Prothonotary

Please deposit the accompanying check in the amount of \$75,580.25 into the Court Escrow Account as appropriate security to stay the execution of the judgment in the above-captioned matter against plaintiff, Paul B. Roemer, M.D., pending appeal.

JUBELIRER, PASS & INTRIERI, P.C.

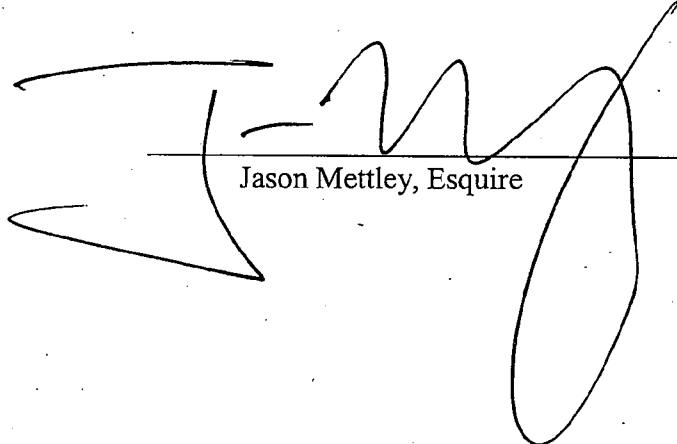
BY: 

Jason Mettley, Esquire  
Attorney Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within Praeceptum for Deposit of Security to Stay Execution was served this 5th day of August, 2005, upon the following by First Class Mail, postage prepaid, addressed as follows:

Carl J. Rychcik, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue, 29<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15222



Jason Mettley, Esquire

DATED: August 5, 2005

PAUL B. ROEMER  
DARLA R. ROEMER  
2215 CATHARINE ST. 814-644-7377  
HUNTINGDON, PA 16652

60-682/433  
7110145918

816

DATE

August 4, 05

PAY TO THE  
ORDER OF

*Frathnotary, Wellbamp Say* \$ 75,580.25  
*Seventy Five Thousand Five Hundred Eighty and 25/100* DOLLARS



**FIRST  
Commonwealth**

First Commonwealth Bank  
Central Offices: Indiana, PA 15701-0400  
Huntingdon Office

MEMO

*Security for deposit*

⑆043306826⑆ 7110 145918 0816  
*2001-74-CA*

*Darla R. Roemer*

PAUL B. ROEMER  
DARLA R. ROEMER  
2215 CATHARINE ST. 814-644-7377  
HUNTINGDON, PA 16652

60-682/433  
7110145918

817

DATE

August 4, 05

PAY TO THE  
ORDER OF

Frothingham, William Gray

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**FIRST**  
Commonwealth

First Commonwealth Bank  
Central Offices: Indiana, PA 15701-0400  
Huntingdon Office

MEMO

Security for judgment

Darla R Roemer

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043306826  
2001-74 CA

7110145918 0817

2215 Catharine Street  
Huntingdon, PA 16652  
August 4, 2005

VIA OVERNIGHT DELIVERY

William Shaw, Prothonotary  
Clearfield County Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Re: Paul Brian Roemer, M.D. vs. Clearfield Professional Group, Ltd.  
Civil Action No. 01-74-CD and No. 01-87-CD

Dear Mr. Shaw:

Enclosed please find two (2) separate checks, both of which are made payable to "Prothonotary, William Shaw". The first check is in the amount of \$75,580.25. This check represents security for the judgment entered against me in the above-referenced matters on July 14, 2005. I am providing this security in order to effect a stay of execution of that judgment while I pursue an appeal with the Superior Court of Pennsylvania. The second check, in the amount of \$770.00, represents full payment of the penalty charge assessed for holding the security in escrow.

Kindly file the appropriate security and the penalty charge, and then note in the docket, and in any separate judgment index, "appeal perfected; lien discharged", as required by Pennsylvania Rule of Appellate Procedure No. 1735. Kindly direct any questions or concerns you may have regarding this matter to my attorney, Jason Mettley, who can be reached at 412-281-3850.

Sincerely,



Paul B. Roemer, M.D.

Enclos.

LAW OFFICES  
JUBELIRER, PASS & INTRIERI, P.C.

219 FORT PITT BOULEVARD  
PITTSBURGH, PENNSYLVANIA 15222-1576

JOSEPH J. PASS  
NEAL R. CRAMER  
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ROBERT A. EBERLE  
JAMES A. WELKER  
JASON METTLEY  
JOSEPH SANTINO PASS

412-281-3850  
412-261-0147

BEN PAUL JUBELIRER (1904-1983)  
FRANK P.G. INTRIERI (1942-1976)

FAX: 412-281-1985  
www.jpilaw.com

August 5, 2005

VIA UPS OVERNIGHT EXPRESS MAIL

William Shaw, Prothonotary  
Clearfield County Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Re: Paul Brian Roemer, M.D. vs. Clearfield Professional Group, Ltd.  
Civil Action No. 01-74-CD and No. 01-87-CD

Dear Mr. Shaw:

Enclosed please find a Praecipe for Deposit of Security to Stay Execution with regard to the above-referenced matter.

Sincerely,

  
Jason Mettley

JM:dmc  
Enclos.

cc: Carl J. Rychcik, Esquire (w/enclos.)  
Paul B. Roemer, M.D. (w/enclos.)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,	) CIVIL DIVISION
	)
Plaintiff/Defendant	) No. 01-74-CD
	) No. 01-87-CD
vs.	)
	)
CLEARFIELD PROFESSIONAL	)
GROUP, LTD.	)
	)
Defendant/Plaintiff	)

NOTICE OF APPEAL

Notice is hereby given that Paul Brian Roemer, M.D., plaintiff in civil action number 01-74-CD, and defendant in civil action number 01-87-CD, hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 8<sup>th</sup> day of July, 2005. This order has been reduced to judgment and entered in the docket as evidenced by the attached copy of the docket entry.

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire  
Pa. I.D. #81966

219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

Attorney for Plaintiff/Defendant,  
Paul B. Roemer, M.D

orig. to 01-87-CD  
**FILED**

AUG 05 2005

William A. Shaw  
Prothonotary/Clerk of Courts

1 COPY TO S/C W/Bo.-

1 COPY TO ATT.

#40



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,	) CIVIL DIVISION
	)
Plaintiff/Defendant	) No. 01-74-CD
	) No. 01-87-CD
vs.	)
	)
CLEARFIELD PROFESSIONAL	)
GROUP, LTD.	)
	)
Defendant/Plaintiff	)

**REQUEST FOR TRANSCRIPT**

A Notice of Appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify, and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire  
Pa. I.D. #81966

219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

Attorney for Plaintiff/Defendant,  
Paul B. Roemer, M.D

Time: 02:09 PM

ROA Report

Page 2 of 3

Case: 2001-00087-CD

Current Judge: John K. Reilly Jr.

Clearfield Professional Group, LTD vs. Paul B Roemer MD

Civil Other

Date		Judge
2/20/2004	Affidavit of Service, Order/Rule to Show Cause dated 19th day of February, 2004 and Petition/Motion for Permission to Amend Complaint filed 19th day of February, 2004, to be served on Plaintiff/Defendant Paul Brian Poemer, M.D. through Jason Mettley, Esq. filed by, s/John Sughrue, Esquire Certificate of Service 3 cc to Atty	John K. Reilly Jr.
3/8/2004	Answer To Petition For Permission To File Amendment To Complaint. filed by, s/Jason Mettley, Esquire Verification s/Paul Brian Roemer, M.D. Certificate of Service 1 cc to Attys	John K. Reilly Jr.
3/11/2004	ORDER filed. AND NOW, this 10th day of March, 2004 it is the Order of the Court that argument on Atty. Stang's Petition has been scheduled for March 24, 2004 before Judge Reilly. s/FJA 1 CC to Atty. Stang. 1 CC to Atty. Mettley.	John K. Reilly Jr.
3/16/2004	Praecipe For Appearance, on behalf of Clearfield Professional Group, LTD, Plaintiff. filed by s/John Sughrue, Esq. 3 cc Atty Sughrue 3 cc Atty Sughrue	John K. Reilly Jr.
3/26/2004	Amendment To Complaint. filed by, s/Carl J. Rychcik, Esq. 1 cc to Atty	John K. Reilly Jr.
4/27/2004	ORDER, AND NOW, this 26th day of April, 2004, re: Civil Non-Jury Trial scheduled for Wed., July 14, 2004 and Thur., July 15, 2004, at 9:00 a.m. each day, before Senior Judge Reilly. by the Court, s/FJA, P.J. 1 cc Atty Mettley, Rychcik and Sughrue	John K. Reilly Jr.
5/17/2004	Answer To Amendment To Complaint. filed by, s/Jason Mettley, Esquire Certificate of Service Verification s/Paul B. Roemer, M.D. no cc	John K. Reilly Jr.
6/24/2004	Notice to Attend, filed by Atty. Stang Original filed to 01-74-CD.	John K. Reilly Jr.
7/15/2004	ORDER, filed. cert to Atty's Mettley, Stang, Rychcik & Sughrue NOW, this 14th day of July, 2004, RE: Finding of fact and conclusions of law	John K. Reilly Jr.
9/16/2004	Transcript of Proceedings with Exhibits, Civil Non-Jury Trial held before Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, July 14, 2004, filed.	John K. Reilly Jr.
9/30/2004	Certificate of Service Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, M.D. was served upon counsel for defendant. s/Jason Mettley, Esq. Certificate of Service Defendant's Proposed Findings of fact and Conclusions of Law was served upon Jason Mettley, Esq. s/Carl J. Rychcik Certificate of Service Defendant's Trial Brief was served upon Jason Mettley, Esq. s/Carl J. Rychcik	John K. Reilly Jr. John K. Reilly Jr. John K. Reilly Jr.
12/9/2004	Finding of Fact, filed. cert. to Stang & Rychcik, Mettley & Sughrue Order, Now, this 9th day of December, 2004, Order of this Court that partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.	John K. Reilly Jr.
12/20/2004	Plaintiff's Motion for Post-Trial Relief, filed by Atty. Mettley 1 Cert. to Atty. (Original filed to 01-74-CD)	John K. Reilly Jr.
12/30/2004	Clearfield Professional Group's Response To Roemer's Motion For Post-Trial Relief, filed by s/ William L. Stang, Esquire. No CC. Original filed to 01-74-CD	John K. Reilly Jr.

Clearfield Professional Group, LTD vs. Paul B Roemer MD

Civil Other

Date		Judge
1/17/2001	Filing: Civil Complaint Paid by: Edward Kabala, Esq. Receipt number: 1816853 Dated: 01/17/2001 Amount: \$80.00 (Check) Two Certified Copies to Sheriff Two Certified Copies to Attorney	No Judge
1/29/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
2/22/2001	Answer and New Matter of Paul B. Roemer, M.D. Filed by s/Jason Mettley, Esq. Verification, s/LPaul Brian Roemer, M.D. Certificate of Service no cc	No Judge
3/12/2001	Reply to New Matter filed on behalf of Plff. No cc.	John K. Reilly Jr.
10/11/2001	Stipulated Motion to Consolidate (Original filed to 01-74-CD), filed. s/Jason Mettley, Esq. s/Susan Brahm Gunn, Esq.	John K. Reilly Jr.
10/15/2001	ORDER, filed. (Original filed to case # 2001-74-CD) 2 Cert. to Atty. Gunn AND NOW, this 15th day of October, 2001, the parties having filed a Stipulated Motion to Consolidate, IT IS ORDERED, that the motion be and the same hereby is, GRANTED. Case Consolidated with 01-74-CD	John K. Reilly Jr.
8/1/2003	Motion For Summary Judgment In Part And In Whole Of Paul B. Roemer, M.D. filed by s/Jason Mettley, Esquire Certificate of Service (Original Filed to 01-74-CD)	John K. Reilly Jr.
10/2/2003	Appendix to Plaintiff's Motions for Summary Judgment, filed by Atty. Mettley (copy of cover sheet in file, Original with case 2001-74-CD)	John K. Reilly Jr.
12/16/2003	OPINION AND ORDER, AND NOW, this 16th day of December, 2003, re: Motions shall be and are hereby GRANTED in part and DISMISSED in part in accordance with the foregoing Opinion. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.
1/2/2004	Defendant's Motion For Continuance Of Trial To Spring Term. filed by, s/Sue Gunn, Esq. Stipulation of Counsel s/Jason Mettley, Esq. Certificate of Service no cc	John K. Reilly Jr.
1/9/2004	ORDER, NOW, this 7th day of January, 2004, it is hereby Ordered that Defendant's Motion for Continuance of Trial to Spring Term is DENIED. by the Court, s/FJA, P.J. 1 cc Atty Gunn	John K. Reilly Jr.
1/15/2004	ORDER, NOW, this 15th day of January, 2004, re: Above-captioned matter shall be removed from the current list for jury trials and scheduled by the CA for trial w/o jury at the convenience of the parties. Pretrial conference scheduled for January 15, 2004, shall be and is hereby CANCELLED. by the Court, s/JKR, JR., Senior Judge, Specially Presiding. copies mailed to: Jason Mettley, Esq., Wm. Stang, Esq., and Carl Rychcik, Esq.	John K. Reilly Jr.
2/11/2004	Praecipe For Entry Of Appearance On Behalf Of Clearfield Professional Group, Ltd. filed by, s/Carl J. Rychcik, Esq. Certificate of Service	John K. Reilly Jr.
2/19/2004	Petition For Permissssion To File Amendment To Complaint and Request For Rule To Show Cause. filed by, s/William L. Stang, Esq.	John K. Reilly Jr.
	ORDER, AND NOW, to wit: this 19th day of February, 2004, Rule issued upon PAUL BRIAN ROEMER, M.D. Rule Returnable on the 8th day of March, 2004, for filing Written Response. by the Court, s/FJA, P.J. 1 cc to Atty	John K. Reilly Jr.

Time: 02:09 PM

ROA Report

Page 3 of 3

Case: 2001-00087-CD

Current Judge: John K. Reilly Jr.

Clearfield Professional Group, LTD vs. Paul B Roemer MD.

## Civil Other

Date	Judge
2/3/2005	John K. Reilly Jr.
Order, AND NOW, this 3rd day of February, 2005, Order that argument on Plaintiff's Motion for Post-Trial Relief has been scheduled for March 31, 2005, at 10:00 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding BY THE COURT: /s/John K. Reilly, Jr., S.J., Sp. Pres. One CC Attys: Mettley, Stang, Sughrue	
3/22/2005	John K. Reilly Jr.
Order, AND NOW, this 22nd day of March, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief currently scheduled for March 31, 2005 at 10:00 a.m. is Continued. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty: Rychick, Mettley. Original to 01-74-CD	
5/20/2005	Fredric Joseph Ammerman
Order, AND NOW, this 20th day of May, 2005, it is the ORDER of the Court that argument on plaintiff's Motion for Post-Trial Relief has been scheduled for Thursday, May 26, 2005 at 9:00 a.m. in Courtroom No. 521, Allegheny County Courthouse, 438 Grant Street, Pittsburgh PA, before the Honorable Judge John K. Reilly. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC to C/A for Service	
7/8/2005	John K. Reilly Jr.
Order, this 8th day of July, 2005, Plaintiff's Motion for Post Trial Relief is hereby dismissed in accordance with the Findings of Fact, Conclusions of Law and Opinion filed by this Court on December 9, 2004. By The Court, /s/ John K. Reilly, Jr., Senior Judge. CC to Atty J. Mettley, W. Stang, Rychick, Sughrue	
7/14/2005	John K. Reilly Jr.
Filing: Praecept For Entry of Judgment On Decision in Non Jury Trial Paid by: Rychcik, Carl J. (attorney for Clearfield Professional Group, LTD) Receipt number: 1904791 Dated: 07/14/2005 Amount: \$20.00 (Check) Judgment in favor of Clearfield Professional Group, Ltd. and against Paul Brian Roemer in the amount of \$75,580.25. Filed by s/ Carl J. Rychcik, Esquire. 1CC & Notice to Atty. Mettley, statement to Atty Rychcik	

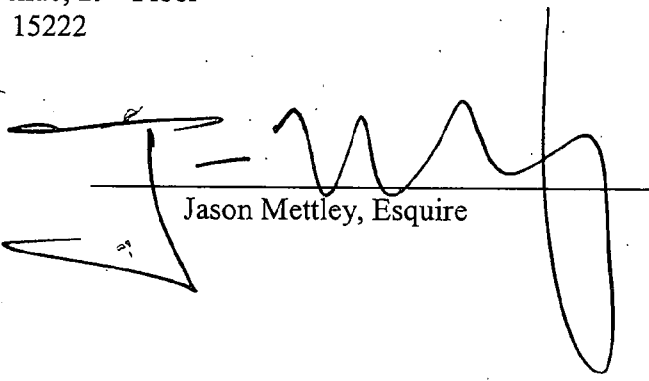
### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Notice of Appeal and Request for Transcript was served this 4<sup>th</sup> day of August, 2005, upon the following by first class mail, postage prepaid, addressed as follows:

John K. Reilly, Jr., Senior Judge  
Clearfield County Courthouse  
Clearfield County Judge's Chambers  
230 East Market Street  
Clearfield, PA 16830

Thomas D. Snyder, RPR  
Official Court Reporter  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

Carl J. Rychcik, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222



Jason Mettley, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD  
NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL,  
GROUP, LTD.,

**PRAECIPE FOR ENTRY OF  
JUDGMENT ON DECISION IN  
NON JURY TRIAL**

Defendant/Plaintiff.

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221  
Carl J. Rycheik  
PA ID #73754

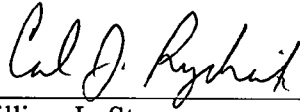
FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**FILED** <sup>62</sup>ICC & Notice  
m/11:23/01 to ~~the~~  
JUL 14 2005 (Amy Mettler)  
Statement to  
William A. Shaw Atty Rycheik  
Prothonotary/Clerk of Courts  
Atty Rycheik  
Pd. 20.00



Respectfully submitted,

DATED: July 13, 2005



---

William L. Stang

PA I.D. # 33221

Carl J. Rychcik

PA I.D. # 73754

**FOX ROTHSCHILD LLP**

625 Liberty Avenue, 29th Floor

Pittsburgh, PA 15222-3115

(412) 391-1334

Counsel for Defendant, Clearfield Professional Group



A

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

DEC 09 2004

Attest.

*Will R.R.*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,  
Plaintiff/Defendant :

VS. :

NO. 01-74 and 01-87-CD

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,  
Defendant/Plaintiff :

FINDINGS OF FACT

1. On or about October 26, 1999, Clearfield Hospital and CPG entered into a Group Recruitment Agreement (the "Group Recruitment Agreement") regarding the recruitment of Dr. Paul Brian Roemer ("Dr. Roemer") to the Clearfield area. [N.T. P 106-107, L 22-13]

2. This agreement was an incentive for CPG to hire Dr. Roemer into its medical practice by providing a guarantee from Clearfield Hospital to cover Dr. Roemer's income for the first 12 months of his employment. [N.T. P 150, L 16-22; P 37, L 17-22]

3. Under the Group Recruitment Agreement, Clearfield Hospital specifically agreed to supplement the income generated by Dr. Roemer during the first year of his employment, if necessary, to meet his monthly salary requirements. [N.T. P 91, L 1-5]

4. On or about October 26, 1999, Dr. Roemer entered

into an employment agreement ("the Employment Agreement") with CPG. [N.T. P 27, L 12-18]

5. Under the Employment Agreement, Dr. Roemer was free to terminate his employment and leave CPG at any time following an initial 12-month period, subject to certain payback provisions of the Group Recruitment Agreement, as long as Dr. Roemer provided written notice to CPG 60 days prior to leaving. [N.T. P 126, L 2-8]

6. Under the Employment Agreement, if Dr. Roemer left the Clearfield Hospital service area prior to October 31, 2005, Dr. Roemer was solely responsible to repay all amounts owed to Clearfield Hospital under the Group Recruitment Agreement. [N.T. P 91, L 6-10]

7. The Employment Agreement provided that if Dr. Roemer left CPG at any time, for any reason, and set up a practice within the Clearfield Hospital service area, within three years of the end of his employment, he was to pay CPG \$1,000 a month for 24 months. [N.T. P 80, L 12-15]

8. Under the Employment Agreement, if Dr. Roemer left CPG at any time, for any reason, and practiced within the Clearfield Hospital service area, CPG would provide him with copies of the files for the patients who went with him and Dr. Roemer was required to pay CPG for clerical costs for copying these files. [N.T. P 82, L 7-13]

9. Dr. Roemer decided to leave CPG. On July 13,

2000, Dr. Roemer provided CPG with his written notice of resignation, indicating that, due to differences in professional practices he was resigning, effective November 1, 2000.

[N.T. P 43, L 12-25]

10. The date Dr. Roemer chose, November 1, 2000, was the earliest date that Dr. Roemer could leave CPG voluntarily under the Employment Agreement. [N.T. P 126-127, L 24-1]

11. When he decided in July of 2000 to leave CPG, Dr. Roemer realized that, pursuant to the Employment Agreement, if he set up a practice within the Clearfield Hospital service area he would be required to pay CPG \$24,000. [N.T. P 62-63, L 25-7]

12. Dr. Roemer knew when he decided in July of 2000 to leave CPG, under the Employment Agreement, if he set up a practice within the Clearfield Hospital service area, he would be required to reimburse CPG for charges CPG incurred for copying patient files to be forwarded to him. [N.T. P 63, L 8-14]

13. Dr. Roemer knew that, when he decided in July of 2000 to leave CPG, if he left the Clearfield Hospital service area, he would be required to repay Clearfield Hospital the amount it had paid on his behalf under the Group Recruitment Agreement. [N.T. P 64, L 15-19]

14. After tendering his resignation in July of

2000, Dr. Roemer made plans to open his own practice within Clearfield, Pennsylvania. [N.T. P 71, L 10-15]

15. Dr. Roemer admitted that it was his plan that when he set up his new practice, he would take with him the patients which CPG had provided to him during his employment. [N.T. P 61, L 19-22]

16. On October 7, 2000, after discovering several hundred patient files in Dr. Roemer's office, Dr. Johnson relieved Dr. Roemer of his clinical duties, asked for Dr. Roemer's key to the building and asked him to leave the building. [N.T. P 132-133, L 12-15; P 135, L 6-12; P 80, L 4-7]

17. Following the events of October 7, 2000, Dr. Roemer decided that he was going to immediately open up his new practice three weeks early and start seeing patients, rather than waiting until November 1, 2000, which he did. [N.T. P 51, L 13-18; P 83, L 5-9]

18. On October 10, 2000, Dr. Johnson wrote to Dr. Roemer indicating to him that he had been relieved of his medical duties for the balance of his employment at CPG and indicated that he remained on CPG's payroll. [N.T. P 144-145, L 1-10]

19. Dr. Roemer received the October 10, 2000, letter from Dr. Johnson [N.T. P 84-85, L 9-8; P 145, L 11-13]

20. CPG was not willing to pay Dr. Roemer through the end of October 2000 and keep him on the CPG payroll while

Dr. Roemer was operating a competing medical practice just blocks down the street from CPG, and diverting CPG patients. [N.T. P 146, L 12-15]

21. Dr. Roemer's employment at CPG effectively ended on October 7, 2000. [N.T. P 175, L 13-15]

22. The decision to effectively end Dr. Roemer's employment three weeks early was made after Dr. Roemer failed to respond to Dr. Johnson's letter of October 10, 2000, and Dr. Roemer continued to operate a competing medical practice down the street from CPG. [N.T. P 175-176, L 21-3]

23. Following October 7, 2000, Dr. Roemer opened up a medical practice in Clearfield, Pennsylvania. [N.T. P 80, L 8-11]

24. Dr. Roemer continued to practice in the Clearfield area until mid-June of 2001. [N.T. P 52, L 2-4]

25. CPG incurred charges in the amount of \$1,686 for copying patients' charts to be sent to Dr. Roemer. [N.T. P 190-191, L 12-15]

26. CPG provided Dr. Roemer with a statement of charges incurred by CPG for copying patients' files. Dr. Roemer did not pay CPG for the charges listed. [N.T. P 81-82, L 16-6]

27. Under the Employment Agreement, if Dr. Roemer left CPG and set up a practice within 36 months of separation, Dr. Roemer became obligated to pay CPG liquidated damages of \$1,000 per month for 24 months. [N.T. P 148-149, L 18-2]

28. Dr. Roemer agreed that, prior to October 7, 2000, he realized his obligation to pay \$24,000 to CPG and fully intended to pay CPG this amount. [N.T. P 80, L 16-20]

29. After October 7, 2000, Dr. Roemer did not pay CPG this amount. [N.T. P 80, L 16-20]

30. CPG's estimate of \$1,000 per month was a conservative estimate of what CPG's costs would be from a former employee becoming a competitor in the community. [N.T. P 179-180, L 24-20]

31. Under the Employment Agreement, Dr. Roemer was solely responsible for any repayment owed to Clearfield Hospital under the Group Recruitment Agreement if he left CPG before October 31, 2005. [N.T. P 152, L 2-5]

32. Clearfield Hospital presently considers amounts owed under the Group Recruitment Agreement to be due and owing to Clearfield Hospital. [N.T. P 107-108, L 22-1]

33. From November 1999 to September 2000, CPG received guarantee payments from Clearfield Hospital totaling \$48,918.08, pursuant to the Group Recruitment Agreement. [N.T. P 188, L 12-15; P 109, L 4-17]

34. Under the Group Recruitment Agreement, collection figures from CPG were to be provided on a cash basis, not an accrual basis. [N.T. P 116-117, L 25-3]

35. The Group Recruitment Agreement permits Clearfield Hospital to calculate interest on the amounts that

are outstanding. [N.T. P 109, L 21-24]

36. Clearfield Hospital has applied an interest rate at prime plus 1 percent which, at the time calculated, was 7.75 percent, accruing from the date of August 1, 2001. [N.T. P 109-110, L 25-4; P 113, L 11-22]

37. Clearfield Hospital sent Dr. Roemer a letter informing Dr. Roemer of the amount that was owed, the interest rate that had been established, and the repayment terms that were expected as part of the Group Recruitment Agreement. [N.T. P 108, L 2-18]

38. Dr. Roemer has not paid Clearfield Hospital the amount demanded of him. [N.T. P 110, L 5-7; P 92, L 18-20]

39. Clearfield Hospital has made a demand on CPG, as well, for the amount that is outstanding under the Guarantee Agreement for Dr. Roemer. [N.T. P 110, L 8-20]

40. CPG has an agreement with Clearfield Hospital that Clearfield Hospital would not require reimbursement from CPG of funds owed under the Group Recruitment Agreement until the conclusion of the present litigation. [N.T. P 152, L 10-20]

41. Shortly after October 7, 2000, Dr. Roemer contacted CPG's telephone company, Verizon, and instructed them to turn off three telephone numbers which were being used by CPG, but were in Dr. Roemer's name. [N.T. P 86-87, L 21-24]

42. The three telephone numbers that Dr. Roemer had shut off were never paid for by Dr. Roemer, but rather were paid



for by CPG. [N.T. P 193, L 4-7]

43. CPG contacted Dr. Roemer and asked him to release these three telephone numbers, but Dr. Roemer refused. [N.T. P 88, L 12-16]

44. CPG incurred damages in the amount of \$231.66 for charges from Verizon to replace the telephone lines that Dr. Roemer had shut off. [N.T. P 195-196, L 19-10]

45. CPG incurred damages in the amount of \$545.49 for charges from Companion Technologies for reprinting patients' statements with new telephone numbers on them. [N.T. P 196, L 12-19]

46. CPG incurred damages in the amount of \$215.32 for charges from Morefield Communications for the installation of new telephone lines as a result of Dr. Roemer having three of CPG's telephone lines shut off. [N.T. P 197-198, L 10-4]

47. CPG's total damages incurred as a result of Dr. Roemer having three of its telephone numbers shut off by Dr. Roemer was \$992.47. [N.T. P 198, L 5-8]

48. Dr. Roemer worked at CPG for approximately 49 weeks out of an initial 52-week contract term. [N.T. P 57-58, L 23-1]

49. By the time Dr. Roemer's employment ended in October of 2000, CPG had already conferred substantial benefits on Dr. Roemer under the Employment Agreement. [N.T. P 154-155, L 15-25]

50. Pursuant to the Employment Agreement, from November of 1999 through October of 2000, CPG provided Dr. Roemer with (i) a salary of approximately \$114,000; (ii) billing services; (iii) office space; (iv) nursing personnel; (v) secretarial personnel; (vi) those supplies necessary to practice medicine; (vii) three weeks of paid time off (two weeks vacation, plus one week for continuing medical education); and (viii) health insurance coverage. [N.T. P 58-59, L 9-23; P 189-190, L 18-11]

#### CONCLUSIONS OF LAW

1. CPG did not materially breach the Employment Agreement.

2. Dr. Roemer received CPG's substantial performance of the Employment Agreement and had an adequate remedy of law available to him for any alleged breach of the Employment Agreement.

3. Dr. Roemer is not entitled to rescission of the Employment Agreement or a finding that he is relieved of his post-employment obligations under the Employment Agreement.

4. CPG did not breach the Employment Agreement.

5. Dr. Roemer breached the Employment Agreement.

6. Dr. Roemer breached the Employment Agreement by setting up a competing medical practice in Clearfield, Pennsylvania, within three years of the end of his employment at

CPG and not paying CPG \$1,000 a month.

7. The contractual provision in the Employment Agreement requiring Dr. Roemer to pay CPG \$1,000 a month for 24 months if Dr. Roemer opened a competing practice within the Clearfield Hospital service area within three years of the end of his employment with CPG is enforceable under Pennsylvania law.

8. Dr. Roemer breached the Employment Agreement by not paying CPG the charges of \$1,686 incurred by CPG for copying records of patients who requested to have their records transferred to Dr. Roemer.

9. Dr. Roemer breached the Employment Agreement by not paying Clearfield Hospital the amounts of the guarantee payments made by Clearfield Hospital to CPG under the Group Recruitment Agreement, plus interest.

10. Dr. Roemer wrongfully misappropriated three telephone lines belonging to CPG.

11. CPG is entitled to an award in its favor and against Dr. Roemer in the amount of \$992.47, plus interest, for loss incurred by CPG to replace CPG's telephone lines and billing stationary, as a result of Dr. Roemer's misappropriation of CPG's telephone lines and related breaches.

#### O P I N I O N

The above two lawsuits arise out of the employment

of Paul B. Roemer, M.D. ("Dr. Roemer") as a physician with Clearfield Professional Group, Ltd. ("CPG"). Dr. Roemer came to Clearfield in the fall of 1999 after being recruited by the Clearfield Hospital. At that time, the hospital and CPG entered into a Group Recruitment Agreement under which the hospital agreed to subsidize Dr. Roemer's monthly salary for the first year of his employment to ensure that, in the event Dr. Roemer did not generate sufficient income in any given month to cover his salary, the hospital would make up the difference. Based on this, CPG entered into an employment agreement with Dr. Roemer commencing at the beginning of November 1999 and to be in effect for one full year. During the latter part of the contract between Dr. Roemer and CPG, problems arose and Dr. Roemer notified CPG that he would be leaving their employ on November 1, 2000. On October 7, 2000, the month before Dr. Roemer was to voluntarily leave CPG's employ, Dr. Richard Johnson, President of CPG, relieved Dr. Roemer of his clinical duties and early the following week Dr. Johnson wrote to Dr. Roemer informing him that, while his medical duties had been suspended, he remained on the CPG payroll. Dr. Roemer elected not to accept this situation but immediately opened a new competing practice in the Clearfield area.

CPG has now commenced suit against Dr. Roemer to 01-87-CD and Dr. Roemer instituted a like suit against CPG to 01-74-CD, each of whom seek to recover alleged damages.

The initial question in each of these lawsuits is whether CPG committed a material breach of the employment agreement on October 7, 2000, when Dr. Roemer was relieved of his clinical duties. This Court is of the opinion that it did not. Initially this Court is of the opinion that, in terminating Dr. Roemer's clinical duties, CPG did not violate the terms and conditions of the employment agreement, in that he was immediately thereafter notified that he would remain on the payroll of CPG even though not performing any medical functions. Nevertheless, even if CPG's conduct constituted a breach of the agreement, said breach could not rise to the level of a material breach.

Nothing in the present situation rises to the level of permitting Dr. Roemer to consider the contract rescinded. The Court notes that he got substantially everything he bargained for under his employment agreement except for three weeks of salary, and he would have received that had he not unilaterally decided to leave CPG and open his own practice. Further, if CPG had indeed breached the contract, Dr. Roemer had an adequate remedy at law in the form of a breach of contract action. To grant a rescission of the contract at this point would result in CPG not receiving the benefit of any of Dr. Roemer's contracted-for post-employment obligations and, finally, whether correct or incorrect, CPG reasonably believed it acted in good faith in relieving Dr. Roemer of his duties.

Dr. Roemer was leaving CPG's employ on November 1, 2000, in any event, by his own choice, and the occurrences on October 7, 2000, when Dr. Roemer left CPG three weeks early initially cannot be attributed to the actions of CPG as set forth above and, in any event, does not arise to the level of a material failure of performance by CPG but, at best, would constitute only an immaterial failure and, as such, does not require rescission of the agreement. See Sgarlat v. Griffith, 36 A.2d 330 (Pa. 1944).

With this in mind, the Court now turns to the claims of CPG in its complaint against Dr. Roemer. CPG first claims that having supplied Dr. Roemer with copies of the medical records which he requested, he should reimburse CPG for the costs of providing said copies. This issue is specifically addressed in the agreement between the parties wherein CPG was obligated to provide the copies and Dr. Roemer obligated to pay the costs of same (see employment agreement at page 1) and this Court therefore holds in favor of CPG on this issue and awards the sum of \$1,636 for copies made.

CPG next claims the sum of \$24,000 from Dr. Roemer under the employment agreement wherein Dr. Roemer agreed to pay CPG \$1,000 a month for 24 months should he open a competing practice within the service area of the Clearfield Hospital within 36 months of leaving CPG. Dr. Roemer did, indeed, open a competing practice within that time period, but remained in said

practice for only nine months. Dr. Roemer opposes this claim, alleging first that he is released from any of the post employment obligations because CPG materially breached the contract. As discussed above, this Court disagrees and must rule against Dr. Roemer on this issue.

Dr. Roemer next claims that the sum of \$1,000 a month does not represent liquidated damages but is, in fact, a penalty and, therefore, unenforceable. The Court notes that a liquidated damages provision is enforceable provided that the sum agreed upon constitutes a reasonable approximation of the expected loss rather than a prohibited penalty. (See Carlos R. Jeffer, Inc. v. Hutter, 696 A.2d 157 (Pa.Super. 1997)). The Court must consider whether the sum stipulated is reasonably related to the potential harm and the ease or difficulty of measuring a breach in damages. (See Hanrahan v. Audubon Builders, Inc., 614 A.2d 748 (Pa.Super 1992)). The record supports the difficulty of determining damages in situations such as this (NT, P 150, L 5-9; P 181, L 9-13) and also that the liquidated damages herein is a reasonable estimate of damages expected (N.T. P 150, L 5-11; P 179-180, L 24-26). Moreover, Dr. Roemer testified that he fully intended to pay CPG the agreed-upon liquidated damages when he opened his new practice (N.T. P 80, L 16-20) and the reason that he has not done so is because he believes CPG materially breached the agreement, thereby releasing him from this

obligation. He does not claim that the amount assessed in any way was a penalty levied against him. Nevertheless, this Court is further of the opinion that the \$1,000 a month liquidated damages should only be assessed for that period of time during which Dr. Roemer was, in fact, practicing in competition with CPG in the Clearfield area, which amounted to nine months. The Court is of the opinion that to impose this sum against Dr. Roemer beyond the time during which he was in active competition with CPG would indeed amount to a penalty and therefore will award to CPG, on this claim, the sum of \$9,000.

CPG next claims that Dr. Roemer is responsible to reimburse Clearfield Hospital for the guaranteed payments it made to CPG to secure Dr. Roemer's employment, specifically that paragraph on page 1 of the employment agreement which states:

"Should Dr. Roemer leave before the end of the 'Repayment/Forgiveness period' (10-31-05) it is understood that any payments required to the Hospital will be Dr. Roemer's sole responsibility."

In lieu of this Court's ruling that CPG did not commit a material breach of the employment agreement, Dr. Roemer has no defense to this claim and, therefore, must pay to Clearfield Hospital or reimburse CPG for any payments made to said hospital in the amount of \$48,918.08, together with interest at agreed-upon rate.

CPG next claims damages for an alleged breach of loyalty committed by Dr. Roemer. This Court has examined the



transcript in detail and can find no support for this claim and, therefore, will rule in Dr. Roemer's favor thereon.

Finally, CPG claims the sum of \$992.47 resulting from Dr. Roemer's improper termination of three telephone lines which CPG had long been using. This Court can find no justification for Dr. Roemer's actions in this regard and does award to CPG the sum of \$992.47.

Dr. Roemer, as Plaintiff to 01-74-CD, in Count I, seeks declaratory relief from his obligations under the employment agreement alleging that CPG materially breached the contract. As discussed above, this Court has found no material breach by CPG and, therefore, will rule against Dr. Roemer on this issue.

In Count II, Dr. Roemer seeks compensation for the portion of October 2000 that he did, in fact, work for CPG, specifically the first week thereof. This Court agrees and will award to the doctor a one week's proportionate share of his monthly income in the specific amount of \$2,332, plus legal interest thereon.

Wherefore, the Court enters the following

#### O R D E R

NOW, this 9th day of December, 2004, following hearing and briefs into the above-captioned actions, it is the

ORDER of this Court that partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Praecipe for Entry of Judgment on Decision in Non Jury Trial was served upon the following individual(s) by first class U.S. Mail this 13th day of July, 2005:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222



---

Carl J. Rychcik

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

Paul Brian Roemer M.D

Vs.

No. 2001-00074-CD

Clearfield Professional Group, LTD


To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$75,580.25 on July 14, 2005.

William A. Shaw  
Prothonotary

---

William A. Shaw

 COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

 **COPY**

Paul Brian Roemer M.D  
Plaintiff(s)

No.: 2001-00074-CD

Real Debt: \$75,580.25

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Clearfield Professional Group, LTD  
Defendant(s)

Entry: \$20.00

Instrument: Judgment on Decision in  
Non Jury Trial

Date of Entry: July 14, 2005

Expires: July 14, 2010

Certified from the record this 14th day of July, 2005.

\_\_\_\_\_  
William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment,  
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

\_\_\_\_\_  
Plaintiff/Attorney

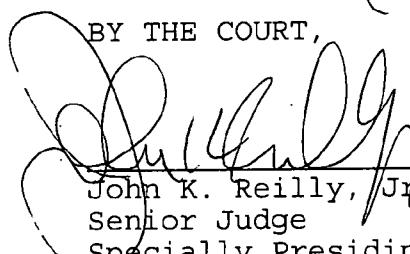
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D. :  
VS. : NO. 01-74 and 01-87-CD  
CLEARFIELD PROFESSIONAL :  
GROUP, LTD. :

O R D E R

AND NOW this 8th day of July, 2005, upon  
consideration of Plaintiff's Motion for Post Trial Relief and  
argument thereon, it is the ORDER of this Court that said motion  
be and is hereby dismissed in accordance with the Findings of  
Fact, Conclusions of Law and Opinion filed by this Court on  
December 9, 2004.

BY THE COURT,  
  
John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

FILED

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William A. Shaw  
Prothonotary/Clerk of Courts

CERT TO ATT. J. METLEY  
W. STANG  
RYCHMAN  
SUGMAN

33

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.


:  
: No. 01-74-CD  
:

:  
: No. 01-87-CD  
:

**ORDER**

AND NOW, this 20<sup>th</sup> day of May, 2005, it is the ORDER of the Court  
that argument on Plaintiff's Motion for Post-Trial Relief in the above matter has been  
scheduled for **Thursday, May 26, 2005 at 9:00 A.M.** in Courtroom No. 521,  
Allegheny County Courthouse, 436 Grant Street, Pittsburgh, PA, before the Honorable  
Judge John K. Reilly, specially presiding in Allegheny County.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

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Prothonotary/Clerk of Courts  
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CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

:  
: No. 01-74-CD  
:  
:  
:

: No. 01-87-CD  
:

**ORDER**

AND NOW, this 22<sup>nd</sup> day of March, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief in the above matter currently scheduled for Thursday, March 31, 2005 at 10:00 A.M. is hereby Continued. The Court Administrator's Office is directed to co-ordinate a new date and time for argument to be scheduled when Judge Reilly is specially presiding in Allegheny County.

BY THE COURT:

*Fredric J. Ammerman*

FREDRIC J. AMMERMAN  
President Judge

FILED

MAR 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

(CIA envelopes)

319



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

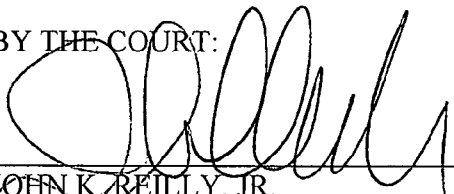
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: **No. 01-74-CD**  
:  
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: No. 01-87-CD  
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**ORDER**

AND NOW, this 3rd day of February, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief in the above matter has been scheduled for Thursday, March 31, 2005 at 10:00 A.M., before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding. Please report to the Court Administrator's Office. You will be directed from there where this argument will take place.

BY THE COURT:

  
\_\_\_\_\_  
JOHN K. REILLY, JR.  
Senior Judge

**FILED**

01/25/05  
FEB 03 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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(CIA env.)

(35)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.

Plaintiff/Defendant,

vs.

CLEARFIELD PROFESSIONAL,  
GROUP, LTD.,

Defendant/Plaintiff.

CIVIL DIVISION

NO. 01-74-CD  
NO. 01-87-CD

**CLEARFIELD PROFESSIONAL  
GROUP'S RESPONSE TO ROEMER'S  
MOTION FOR POST-TRIAL RELIEF**

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221  
Carl J. Rychcik  
Pa. ID #73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

FILED  
DEC 30 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL GROUP, LTD.,

Defendant/Plaintiff.

**CLEARFIELD PROFESSIONAL GROUP'S  
RESPONSE TO ROEMER'S MOTION FOR POST-TRIAL RELIEF**

And now comes Clearfield Professional Group, Ltd. ("CPG"), by and through its attorneys, Fox Rothschild LLP, and files the within Response to Roemer's Motion for Post-Trial Relief, and in support thereof avers as follows:

**I. REQUEST FOR RELIEF**

CPG requests that this Honorable Court deny Paul B. Roemer's ("Roemer") Motion for Post-Trial Relief in its entirety and enter a final judgment pursuant to this Court's Findings Of Fact, Conclusions Of Law, Opinion And Order dated December 9, 2004. This final judgment in CPG's favor should include, but is not limited to, the following: (i) a judgment in favor of CPG and against Roemer in the amount of \$48,918.08, which represents the amount of the income guarantee payments made by Clearfield Hospital to CPG under the Group Recruitment Agreement, plus interest at the agreed upon rate; (ii) a judgment in favor of CPG and against Roemer in the amount of \$9,000, pursuant to the parties' Employment Agreement; and (iii) a judgment in favor of CPG and against Roemer in the amount of \$1,686, for copying costs pursuant to the parties' Employment Agreement.<sup>1</sup>

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<sup>1</sup> Although not at issue in Roemer's Motion For Post-Trial Relief, CPG also ultimately seeks a judgment in favor of CPG and against Roemer for \$992.47 for Roemer's improper termination of three telephone lines which CPG had long been using, in accordance with the Court's December 9, 2004 ruling.

**II. THE COURT CORRECTLY HELD THAT ROEMER BREACHED THE EMPLOYMENT AGREEMENT BY NOT PAYING THE AMOUNTS OF THE GUARANTEE PAYMENTS MADE BY CLEARFIELD HOSPITAL TO CPG UNDER THE GROUP RECRUITMENT AGREEMENT, PLUS INTEREST.**

1. The Court's determination that Roemer is liable to CPG for the income guarantee payments made by Clearfield Hospital is correct as a matter of law and supported by the evidence. *See* Findings of Fact Nos. 1-3; 6; 13; and 31-39.

2. The evidence at trial supported the finding that Roemer breached the Employment Agreement, separate and apart from the finding that CPG did **not** materially breach the Employment Agreement. *Id.*

3. Contrary to Roemer's baseless allegations, the evidence at trial supported that Roemer did decide to leave CPG, and therefore is liable to CPG for the income guarantee payments made by Clearfield Hospital. *See* Findings of Fact Nos. 9-10.

4. Contrary to Roemer's continued attempts to twist the facts, the evidence at trial supported the Court's finding that Roemer was **not** unconditionally discharged by CPG. *See* Findings of Fact Nos. 16-22.

**III. THE COURT CORRECTLY HELD THAT ROEMER BREACHED THE EMPLOYMENT AGREEMENT BY NOT PAYING CPG THE \$1,000 PER MONTH LIQUIDATED DAMAGES.**

5. Although CPG continues to believe that it was entitled to the full \$24,000 damages amount set forth in the liquidated damages provision contained in the Employment Agreement, rather than the \$9,000 awarded by the Court, CPG agrees that the Court's determination that Dr. Roemer is liable to pay CPG \$1,000 per month under the liquidated

damages provision is correct as a matter of law and is supported by the competent evidence. *See* Findings of Fact Nos. 7; 11; 23; 24; 27-29.

6. Contrary to Dr. Roemer's baseless allegations, the evidence at trial supported that Roemer did decide to leave CPG, and therefore is liable to CPG for the \$1,000 per month payments contained in the liquidated damages provision. *See* Findings of Fact Nos. 9-10.

7. Contrary to Roemer's continued attempts to twist the facts, the evidence at trial supported the Court's finding that Roemer was **not** unconditionally discharged by CPG. *See* Findings of Fact Nos. 16-22.

8. The evidence also supported that the \$1,000 per month liquidated damages provision in the Employment Agreement was an enforceable liquidated damages clause as opposed to an unenforceable penalty. *See* Findings of Fact No. 30.

9. The evidence further demonstrated that the liquidated damages provision was a reasonable and conservative estimate of CPG's damages from a former employee leaving and becoming a competitor in the community. *Id.*

**IV. THE COURT CORRECTLY FOUND THAT DR. ROEMER BREACHED THE EMPLOYMENT AGREEMENT BY NOT REIMBURSING CPG FOR COPYING COSTS.**

10. The Court's determination that Roemer is liable to pay CPG for copying costs is correct as a matter of law and supported by the evidence. *See* Findings of Fact Nos. 8; 12; and 23-26.

11. Contrary to Roemer's baseless allegations, the evidence supported that Roemer did decide to leave CPG, and therefore is liable to CPG for copying costs. *See* Findings of Fact Nos. 9-10.

12. Contrary to Roemer's continued attempts to twist the facts, the evidence at trial supported the Court's finding that Roemer was **not** unconditionally discharged by CPG. *See* Findings of Fact Nos. 16-22.

13. CPG also further intends to reference the trial testimony with argument in support of each basis for its opposition to Roemer's Motion for Post-Trial Relief.

WHEREFORE, Clearfield Professional Group Ltd. respectfully requests that the Court deny Roemer's Motion for Post-Trial Relief in its entirety and enter a final judgment pursuant to the Court's Findings of Fact, Conclusions of Law, Opinion and Order dated December 9, 2004. This final judgment in CPG's favor should include, but is not limited to, the following: (i) a judgment in favor of CPG and against Roemer in the amount of \$48,918.08, which represents the amount of the income guarantee payments made by Clearfield Hospital to CPG under the Group Recruitment Agreement, plus interest at the agreed upon rate; (ii) a judgment in favor of CPG and against Roemer in the amount of \$9,000, pursuant to the parties' Employment Agreement; and (iii) a judgment in favor of CPG and against Roemer in the amount of \$1,686, for copying costs pursuant to the parties' Employment Agreement.

Respectfully submitted,



**DATED:** December 21, 2004

William L. Stang  
PA I.D. # 33221  
Carl J. Rychcik  
PA I.D. # 73754  
**FOX ROTHSCHILD LLP**  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334  
Counsel for Defendant,  
Clearfield Professional Group

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL GROUP, LTD.,

Defendant/Plaintiff.

**ORDER OF COURT**

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby ORDERED ADJUDGED AND DECREED that Roemer's Motion for Post-Trial Relief is denied in its entirety and a final judgment pursuant to this Court's Findings of Fact, Conclusions of Law, Opinion and Order dated December 9, 2004 shall be entered. This final judgment in CPG's favor will include, but is not limited to, the following: (i) a judgment in favor of CPG and against Roemer in the amount of \$48,918.08, which represents the amount of the income guarantee payments made by Clearfield Hospital to CPG under the Group Recruitment Agreement, plus interest at the agreed upon rate; (ii) a judgment in favor of CPG and against Roemer in the amount of \$9,000, pursuant to the parties' Employment Agreement; and (iii) a judgment in favor of CPG and against Roemer in the amount of \$1,686, for copying costs pursuant to the parties' Employment Agreement.

BY THE COURT:

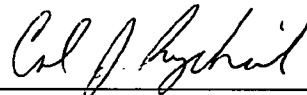
\_\_\_\_\_. J.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Clearfield Professional Group's Response To Roemer's Motion For Post-Trial Relief was served upon the following individual(s) by first class U.S. Mail this 29 day of December, 2004:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Judge John K. Reilly, Jr.  
230 East Market Street  
Clearfield, PA 16830



---

Carl J. Rychcik



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D., )  
 )  
Plaintiff ) Nos. 01-74-CD;  
 ) 01-87-CD  
vs. )  
 )  
CLEARFIELD PROFESSIONAL )  
GROUP, LTD. )  
 )  
Defendant ) JURY TRIAL DEMANDED

FILED

DEC 20 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 1000 7-11-04

**PLAINTIFF'S MOTION FOR POST-TRIAL RELIEF  
PURSUANT TO Pa R.C.P. No. 227.1**

AND NOW COMES Paul B. Roemer, M.D., by and through his attorneys, Jubelirer, Pass & Intrieri, P.C. and Jason Mettley, Esquire, and files the within Motion for Post-Trial Relief Pursuant to Pa. R.C.P. No. 227.1, and in support thereof avers as follows:

**I. REQUEST FOR RELIEF**

Plaintiff, Paul B. Roemer, M.D. (hereinafter referred to as "Dr. Roemer"), requests the Court to reverse its order granting partial judgment to defendant, Clearfield Professional Group, Ltd. (the "CPG"), to the extent that it: 1) requires Dr. Roemer pay the CPG the amounts of the income guarantee payments made by Clearfield Hospital to the CPG under the Group Recruitment Agreement, plus interest; 2) requires Dr. Roemer to make any payments to the CPG under the \$1,000 per month provision of the parties' Employment Contract; and, 3) requires Dr. Roemer to repay the

CPG for copying costs. Dr. Roemer further requests that judgment be entered in his favor accordingly.

**II. THE COURT ERRED AS A MATTER OF LAW BY FINDING THAT DR. ROEMER BREACHED THE EMPLOYMENT AGREEMENT BY NOT PAYING CLEARFIELD HOSPITAL THE AMOUNTS OF THE GUARANTEE PAYMENTS MADE BY CLEARFIELD HOSPITAL TO CPG UNDER THE GROUP RECRUITMENT AGREEMENT, PLUS INTEREST.**

1. The Court's determination that Dr. Roemer is liable to the CPG for the income guarantee payments made by the Clearfield Hospital is erroneous as a matter of law and is not supported by the competent evidence.

2. The Court found Dr. Roemer to be in breach of the Employment Contract and held him liable to the CPG for the income guarantee payments because Dr. Roemer had not persuaded the Court that the CPG committed "a material breach of the employment agreement".

3. While the Court's finding that the CPG had not committed a material breach means that Dr. Roemer is not entitled to a rescission of the Employment Contract, the Court erred when it used that same finding as a basis to find Dr. Roemer in breach and require him to compensate the CPG for the income guarantee payments it owes the Clearfield Hospital.

4. The Court erred by ruling in favor of the CPG without requiring it to satisfy its burden of proving that Dr. Roemer engaged in conduct that breached the Employment Contract. It was an error for the Court to find that because Dr. Roemer failed to prove his case the CPG automatically prevailed on theirs.

5. The Court erred by failing to find that that because the CPG discharged Dr. Roemer, he did not "leave" employment and therefore was not liable to the CPG for the income guarantee payments made by the Clearfield Hospital.

6. The competent evidence demonstrated that Dr. Roemer was clearly, permanently and unconditionally discharged from his duties by the CPG on October 7, 2000.

7. These grounds were previously asserted by Dr. Roemer as part of his motion for summary judgment and in his Proposed Findings of Fact, Conclusions of Law and Post-Trial Memorandum of Law.

**III. THE COURT ERRED AS A MATTER OF LAW BY FINDING THAT DR. ROEMER BREACHED THE EMPLOYMENT AGREEMENT BY NOT PAYING THE CPG \$1,000 PER MONTH.**

8. The Court's determination that Dr. Roemer is liable to pay the CPG \$1,000 per month is erroneous as a matter of law and is not supported by the competent evidence.

9. The Court erred by failing to find that because the CPG discharged Dr. Roemer, he did not "leave" employment and therefore was not liable to the CPG for the \$1,000 per month payments, even assuming that provision to be an enforceable liquidated damages clause.

10. The competent evidence demonstrated that Dr. Roemer was clearly, permanently and unconditionally discharged from his duties by the CPG on October 7, 2000.

11. The Court further erred by finding that the \$1,000 per month provision of the Employment Contract was an enforceable liquidated damages clause instead of an unenforceable penalty provision.

12. The competent evidence demonstrated that the \$1,000 per month was a speculative figure set by the CPG bearing no reasonable relationship to foreseeable damages.

13. These grounds were previously asserted by Dr. Roemer as part of his motion for summary judgment and in his Proposed Findings of Fact, Conclusions of Law and Post-Trial Memorandum of Law.

**IV. THE COURT ERRED AS A MATTER OF LAW BY FINDING THAT DR. ROEMER BREACHED THE EMPLOYMENT AGREEMENT BY NOT REIMBURSING THE CPG FOR COPYING COSTS.**

14. The Court's determination that Dr. Roemer is liable to pay the CPG for copying costs is erroneous as a matter of law and is not supported by the competent evidence.

15. The Court erred by failing to find that because the CPG discharged Dr. Roemer, he did not "leave" employment and therefore was not liable to the CPG for copying costs.

16. The competent evidence demonstrated that Dr. Roemer was clearly, permanently and unconditionally discharged from his duties by the CPG on October 7, 2000.

17. These grounds were previously asserted by Dr. Roemer as part of his motion for summary judgment and in his Proposed Findings of Fact, Conclusions of Law and Post-Trial Memorandum of Law.

18. Dr. Roemer intends to reference the trial testimony with argument in support of each basis for post-trial relief asserted herein. Dr. Roemer therefore requests that a transcript of the testimony be prepared for the Court's consideration in deciding this Motion.

WHEREFORE, plaintiff, Paul B. Roemer, M.D. (hereinafter referred to as "Dr. Roemer"), respectfully requests the Court to reverse its order granting partial judgment to defendant, Clearfield Professional Group, Ltd. (the "CPG"), to the extent that it: 1) requires Dr. Roemer pay the CPG the amounts of the income guarantee payments made by Clearfield Hospital to the CPG under the Group Recruitment Agreement, plus interest; 2) requires Dr. Roemer to make any payments to the CPG under the \$1,000 per month provision of the parties' Employment Contract; and, 3) requires Dr. Roemer to repay the CPG for copying costs. Dr. Roemer further requests that judgment be entered in his favor accordingly.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire

Attorney for Paul B. Roemer, M.D.

DATE: 17 December 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Motion for Post-Trial Relief Pursuant to Pa. R.C.P. No. 227.1 was served upon counsel for all parties this 17th day of December, 2004, by First Class U.S. Mail, postage prepaid, addressed as follows:

Honorable John K. Reilly, Jr.  
Clearfield County  
Court of Common Pleas  
Clearfield County Courthouse  
Clearfield, PA 16830

Carl J. Rychcik, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

John Sughrue, Esquire  
23 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830



Jason Mettley, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,	)	
	)	
Plaintiff	)	Nos. 01-74-CD
	)	01-87-CD
vs.	)	
	)	
CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Defendant	)	JURY TRIAL DEMANDED

**ORDER OF COURT**

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby  
ADJUDGED, ORDERED AND DECREED that Plaintiff's Motion for Post-Trial Relief Pursuant to  
Pa. R.C.P. No. 227.1 is GRANTED, and the Order of December 9, 2004 in this case granting partial  
judgment to defendant, Clearfield Professional Group, Ltd. (the "CPG"), is REVERSED to the  
extent that it: 1) requires Dr. Roemer pay the CPG the amounts of the income guarantee payments  
made by Clearfield Hospital to the CPG under the Group Recruitment Agreement, plus interest; 2)  
requires Dr. Roemer to make any payments to the CPG under the \$1,000 per month provision of the  
parties' Employment Contract; and, 3) requires Dr. Roemer to repay the CPG for copying costs.  
Judgment is hereby ENTERED accordingly in Plaintiff's favor.

BY THE COURT:

\_\_\_\_\_. J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D., :  
Plaintiff/Defendant :

VS. :

NO. 01-74 and 01-87-CD

CLEARFIELD PROFESSIONAL :  
GROUP, LTD., :  
Defendant/Plaintiff :

**FILED**

DEC 09 2004

William A. Shaw

Prothonotary/Clerk of Courts  
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FINDINGS OF FACT

1. On or about October 26, 1999, Clearfield Hospital and CPG entered into a Group Recruitment Agreement (the "Group Recruitment Agreement") regarding the recruitment of Dr. Paul Brian Roemer ("Dr. Roemer") to the Clearfield area. [N.T. P 106-107, L 22-13]

2. This agreement was an incentive for CPG to hire Dr. Roemer into its medical practice by providing a guarantee from Clearfield Hospital to cover Dr. Roemer's income for the first 12 months of his employment. [N.T. P 150, L 16-22; P 37, L 17-22]

3. Under the Group Recruitment Agreement, Clearfield Hospital specifically agreed to supplement the income generated by Dr. Roemer during the first year of his employment, if necessary, to meet his monthly salary requirements. [N.T. P 91, L 1-5]

4. On or about October 26, 1999, Dr. Roemer entered



into an employment agreement ("the Employment Agreement") with CPG. [N.T. P 27, L 12-18]

5. Under the Employment Agreement, Dr. Roemer was free to terminate his employment and leave CPG at any time following an initial 12-month period, subject to certain payback provisions of the Group Recruitment Agreement, as long as Dr. Roemer provided written notice to CPG 60 days prior to leaving. [N.T. P 126, L 2-8]

6. Under the Employment Agreement, if Dr. Roemer left the Clearfield Hospital service area prior to October 31, 2005, Dr. Roemer was solely responsible to repay all amounts owed to Clearfield Hospital under the Group Recruitment Agreement. [N.T. P 91, L 6-10]

7. The Employment Agreement provided that if Dr. Roemer left CPG at any time, for any reason, and set up a practice within the Clearfield Hospital service area, within three years of the end of his employment, he was to pay CPG \$1,000 a month for 24 months. [N.T. P 80, L 12-15]

8. Under the Employment Agreement, if Dr. Roemer left CPG at any time, for any reason, and practiced within the Clearfield Hospital service area, CPG would provide him with copies of the files for the patients who went with him and Dr. Roemer was required to pay CPG for clerical costs for copying these files. [N.T. P 82, L 7-13]

9. Dr. Roemer decided to leave CPG. On July 13,

2000, Dr. Roemer provided CPG with his written notice of resignation, indicating that, due to differences in professional practices he was resigning, effective November 1, 2000.

[N.T. P 43, L 12-25]

10. The date Dr. Roemer chose, November 1, 2000, was the earliest date that Dr. Roemer could leave CPG voluntarily under the Employment Agreement. [N.T. P 126-127, L 24-1]

11. When he decided in July of 2000 to leave CPG, Dr. Roemer realized that, pursuant to the Employment Agreement, if he set up a practice within the Clearfield Hospital service area he would be required to pay CPG \$24,000. [N.T. P 62-63, L 25-7]

12. Dr. Roemer knew when he decided in July of 2000 to leave CPG, under the Employment Agreement, if he set up a practice within the Clearfield Hospital service area, he would be required to reimburse CPG for charges CPG incurred for copying patient files to be forwarded to him. [N.T. P 63, L 8-14]

13. Dr. Roemer knew that, when he decided in July of 2000 to leave CPG, if he left the Clearfield Hospital service area, he would be required to repay Clearfield Hospital the amount it had paid on his behalf under the Group Recruitment Agreement. [N.T. P 64, L 15-19]

14. After tendering his resignation in July of

2000, Dr. Roemer made plans to open his own practice within Clearfield, Pennsylvania. [N.T. P 71, L 10-15]

15. Dr. Roemer admitted that it was his plan that when he set up his new practice, he would take with him the patients which CPG had provided to him during his employment. [N.T. P 61, L 19-22]

16. On October 7, 2000, after discovering several hundred patient files in Dr. Roemer's office, Dr. Johnson relieved Dr. Roemer of his clinical duties, asked for Dr. Roemer's key to the building and asked him to leave the building. [N.T. P 132-133, L 12-15; P 135, L 6-12; P 80, L 4-7]

17. Following the events of October 7, 2000, Dr. Roemer decided that he was going to immediately open up his new practice three weeks early and start seeing patients, rather than waiting until November 1, 2000, which he did. [N.T. P 51, L 13-18; P 83, L 5-9]

18. On October 10, 2000, Dr. Johnson wrote to Dr. Roemer indicating to him that he had been relieved of his medical duties for the balance of his employment at CPG and indicated that he remained on CPG's payroll. [N.T. P 144-145, L 1-10]

19. Dr. Roemer received the October 10, 2000, letter from Dr. Johnson [N.T. P 84-85, L 9-8; P 145, L 11-13]

20. CPG was not willing to pay Dr. Roemer through the end of October 2000 and keep him on the CPG payroll while

Dr. Roemer was operating a competing medical practice just blocks down the street from CPG, and diverting CPG patients. [N.T. P 146, L 12-15]

21. Dr. Roemer's employment at CPG effectively ended on October 7, 2000. [N.T. P 175, L 13-15]

22. The decision to effectively end Dr. Roemer's employment three weeks early was made after Dr. Roemer failed to respond to Dr. Johnson's letter of October 10, 2000, and Dr. Roemer continued to operate a competing medical practice down the street from CPG. [N.T. P 175-176, L 21-3]

23. Following October 7, 2000, Dr. Roemer opened up a medical practice in Clearfield, Pennsylvania. [N.T. P 80, L 8-11]

24. Dr. Roemer continued to practice in the Clearfield area until mid-June of 2001. [N.T. P 52, L 2-4]

25. CPG incurred charges in the amount of \$1,686 for copying patients' charts to be sent to Dr. Roemer. [N.T. P 190-191, L 12-15]

26. CPG provided Dr. Roemer with a statement of charges incurred by CPG for copying patients' files. Dr. Roemer did not pay CPG for the charges listed. [N.T. P 81-82, L 16-6]

27. Under the Employment Agreement, if Dr. Roemer left CPG and set up a practice within 36 months of separation, Dr. Roemer became obligated to pay CPG liquidated damages of \$1,000 per month for 24 months. [N.T. P 148-149, L 18-2]

28. Dr. Roemer agreed that, prior to October 7, 2000, he realized his obligation to pay \$24,000 to CPG and fully intended to pay CPG this amount. [N.t> P 80, L 16-20]

29. After October 7, 2000, Dr. Roemer did not pay CPG this amount. [N.T. P 80, L 16-20]

30. CPG's estimate of \$1,000 per month was a conservative estimate of what CPG's costs would be from a former employee becoming a competitor in the community. [N.T. P 179-180, L 24-20]

31. Under the Employment Agreement, Dr. Roemer was solely responsible for any repayment owed to Clearfield Hospital under the Group Recruitment Agreement if he left CPG before October 31, 2005. [N.T. P 152, L 2-5]

32. Clearfield Hospital presently considers amounts owed under the Group Recruitment Agreement to be due and owing to Clearfield Hospital. [N.T. P 107-108, L 22-1]

33. From November 1999 to September 2000, CPG received guarantee payments from Clearfield Hospital totaling \$48,918.08, pursuant to the Group Recruitment Agreement. [N.T. P 188, L 12-15; P 109, L 4-17]

34. Under the Group Recruitment Agreement, collection figures from CPG were to be provided on a cash basis, not an accrual basis. [N.T. P 116-117, L 25-3]

35. The Group Recruitment Agreement permits Clearfield Hospital to calculate interest on the amounts that

are outstanding. [N.T. P 109, L 21-24]

36. Clearfield Hospital has applied an interest rate at prime plus 1 percent which, at the time calculated, was 7.75 percent, accruing from the date of August 1, 2001. [N.T. P 109-110, L 25-4; P 113, L 11-22]

37. Clearfield Hospital sent Dr. Roemer a letter informing Dr. Roemer of the amount that was owed, the interest rate that had been established, and the repayment terms that were expected as part of the Group Recruitment Agreement. [N.T. P 108, L 2-18]

38. Dr. Roemer has not paid Clearfield Hospital the amount demanded of him. [N.T. P 110, L 5-7; P 92, L 18-20]

39. Clearfield Hospital has made a demand on CPG, as well, for the amount that is outstanding under the Guarantee Agreement for Dr. Roemer. [N.T. P 110, L 8-20]

40. CPG has an agreement with Clearfield Hospital that Clearfield Hospital would not require reimbursement from CPG of funds owed under the Group Recruitment Agreement until the conclusion of the present litigation. [N.T. P 152, L 10-20]

41. Shortly after October 7, 2000, Dr. Roemer contacted CPG's telephone company, Verizon, and instructed them to turn off three telephone numbers which were being used by CPG, but were in Dr. Roemer's name. [N.T. P 86-87, L 21-24]

42. The three telephone numbers that Dr. Roemer had shut off were never paid for by Dr. Roemer, but rather were paid

for by CPG. [N.T. P 193, L 4-7]

43. CPG contacted Dr. Roemer and asked him to release these three telephone numbers, but Dr. Roemer refused. [N.T. P 88, L 12-16]

44. CPG incurred damages in the amount of \$231.66 for charges from Verizon to replace the telephone lines that Dr. Roemer had shut off. [N.T. P 195-196, L 19-10]

45. CPG incurred damages in the amount of \$545.49 for charges from Companion Technologies for reprinting patients' statements with new telephone numbers on them. [N.T. P 196, L 12-19]

46. CPG incurred damages in the amount of \$215.32 for charges from Morefield Communications for the installation of new telephone lines as a result of Dr. Roemer having three of CPG's telephone lines shut off. [N.T. P 197-198, L 10-4]

47. CPG's total damages incurred as a result of Dr. Roemer having three of its telephone numbers shut off by Dr. Roemer was \$992.47. [N.T. P 198, L 5-8]

48. Dr. Roemer worked at CPG for approximately 49 weeks out of an initial 52-week contract term. [N.T. P 57-58, L 23-1]

49. By the time Dr. Roemer's employment ended in October of 2000, CPG had already conferred substantial benefits on Dr. Roemer under the Employment Agreement. [N.T. P 154-155, L 15-25]

50. Pursuant to the Employment Agreement, from November of 1999 through October of 2000, CPG provided Dr. Roemer with (i) a salary of approximately \$114,000; (ii) billing services; (iii) office space; (iv) nursing personnel; (v) secretarial personnel; (vi) those supplies necessary to practice medicine; (vii) three weeks of paid time off (two weeks vacation, plus one week for continuing medical education); and (viii) health insurance coverage. [N.T. P 58-59, L 9-23; P 189-190, L 18-11]

#### CONCLUSIONS OF LAW

1. CPG did not materially breach the Employment Agreement.

2. Dr. Roemer received CPG's substantial performance of the Employment Agreement and had an adequate remedy of law available to him for any alleged breach of the Employment Agreement.

3. Dr. Roemer is not entitled to rescission of the Employment Agreement or a finding that he is relieved of his post-employment obligations under the Employment Agreement.

4. CPG did not breach the Employment Agreement.

5. Dr. Roemer breached the Employment Agreement.

6. Dr. Roemer breached the Employment Agreement by setting up a competing medical practice in Clearfield, Pennsylvania, within three years of the end of his employment at



CPG and not paying CPG \$1,000 a month.

7. The contractual provision in the Employment Agreement requiring Dr. Roemer to pay CPG \$1,000 a month for 24 months if Dr. Roemer opened a competing practice within the Clearfield Hospital service area within three years of the end of his employment with CPG is enforceable under Pennsylvania law.

8. Dr. Roemer breached the Employment Agreement by not paying CPG the charges of \$1,686 incurred by CPG for copying records of patients who requested to have their records transferred to Dr. Roemer.

9. Dr. Roemer breached the Employment Agreement by not paying Clearfield Hospital the amounts of the guarantee payments made by Clearfield Hospital to CPG under the Group Recruitment Agreement, plus interest.

10. Dr. Roemer wrongfully misappropriated three telephone lines belonging to CPG.

11. CPG is entitled to an award in its favor and against Dr. Roemer in the amount of \$992.47, plus interest, for costs incurred by CPG to replace CPG's telephone lines and billing stationary, as a result of Dr. Roemer's misappropriation of CPG's telephone lines and related breaches.

#### O P I N I O N

The above two lawsuits arise out of the employment

of Paul B. Roemer, M.D. ("Dr. Roemer") as a physician with Clearfield Professional Group, Ltd. ("CPG"). Dr. Roemer came to Clearfield in the fall of 1999 after being recruited by the Clearfield Hospital. At that time, the hospital and CPG entered into a Group Recruitment Agreement under which the hospital agreed to subsidize Dr. Roemer's monthly salary for the first year of his employment to ensure that, in the event Dr. Roemer did not generate sufficient income in any given month to cover his salary, the hospital would make up the difference. Based on this, CPG entered into an employment agreement with Dr. Roemer commencing at the beginning of November 1999 and to be in effect for one full year. During the latter part of the contract between Dr. Roemer and CPG, problems arose and Dr. Roemer notified CPG that he would be leaving their employ on November 1, 2000. On October 7, 2000, the month before Dr. Roemer was to voluntarily leave CPG's employ, Dr. Richard Johnson, President of CPG, relieved Dr. Roemer of his clinical duties and early the following week Dr. Johnson wrote to Dr. Roemer informing him that, while his medical duties had been suspended, he remained on the CPG payroll. Dr. Roemer elected not to accept this situation but immediately opened a new competing practice in the Clearfield area.

CPG has now commenced suit against Dr. Roemer to 01-87-CD and Dr. Roemer instituted a like suit against CPG to 01-74-CD, each of whom seek to recover alleged damages.

The initial question in each of these lawsuits is whether CPG committed a material breach of the employment agreement on October 7, 2000, when Dr. Roemer was relieved of his clinical duties. This Court is of the opinion that it did not. Initially this Court is of the opinion that, in terminating Dr. Roemer's clinical duties, CPG did not violate the terms and conditions of the employment agreement, in that he was immediately thereafter notified that he would remain on the payroll of CPG even though not performing any medical functions. Nevertheless, even if CPG's conduct constituted a breach of the agreement, said breach could not rise to the level of a material breach.

Nothing in the present situation rises to the level of permitting Dr. Roemer to consider the contract rescinded. The Court notes that he got substantially everything he bargained for under his employment agreement except for three weeks of salary, and he would have received that had he not unilaterally decided to leave CPG and open his own practice. Further, if CPG had indeed breached the contract, Dr. Roemer had an adequate remedy at law in the form of a breach of contract action. To grant a rescission of the contract at this point would result in CPG not receiving the benefit of any of Dr. Roemer's contracted-for post-employment obligations and, finally, whether correct or incorrect, CPG reasonably believed it acted in good faith in relieving Dr. Roemer of his duties.

Dr. Roemer was leaving CPG's employ on November 1, 2000, in any event, by his own choice, and the occurrences on October 7, 2000, when Dr. Roemer left CPG three weeks early initially cannot be attributed to the actions of CPG as set forth above and, in any event, does not arise to the level of a material failure of performance by CPG but, at best, would constitute only an immaterial failure and, as such, does not require rescission of the agreement. See Sgarlat v. Griffith, 36 A.2d 330 (Pa. 1944).

With this in mind, the Court now turns to the claims of CPG in its complaint against Dr. Roemer. CPG first claims that having supplied Dr. Roemer with copies of the medical records which he requested, he should reimburse CPG for the costs of providing said copies. This issue is specifically addressed in the agreement between the parties wherein CPG was obligated to provide the copies and Dr. Roemer obligated to pay the costs of same (see employment agreement at page 1) and this Court therefore holds in favor of CPG on this issue and awards the sum of \$1,686 for copies made.

CPG next claims the sum of \$24,000 from Dr. Roemer under the employment agreement wherein Dr. Roemer agreed to pay CPG \$1,000 a month for 24 months should he open a competing practice within the service area of the Clearfield Hospital within 36 months of leaving CPG. Dr. Roemer did, indeed, open a competing practice within that time period, but remained in said

practice for only nine months. Dr. Roemer opposes this claim, alleging first that he is released from any of the post employment obligations because CPG materially breached the contract. As discussed above, this Court disagrees and must rule against Dr. Roemer on this issue.

Dr. Roemer next claims that the sum of \$1,000 a month does not represent liquidated damages but is, in fact, a penalty and, therefore, unenforceable. The Court notes that a liquidated damages provision is enforceable provided that the sum agreed upon constitutes a reasonable approximation of the expected loss rather than a prohibited penalty. (See Carlos R. Leffler, Inc. v. Hutter, 696 A.2d 157 (Pa.Super. 1997)). The Court must consider whether the sum stipulated is reasonably related to the potential harm and the ease or difficulty of measuring a breach in damages. (See Hanrahan v. Audubon Builders, Inc., 614 A.2d 748 (Pa.Super 1992)). The record supports the difficulty of determining damages in situations such as this (NT, P 150, L 5-9; P 181, L 9-13) and also that the liquidated damages herein is a reasonable estimate of damages expected (N.T. P 150, L 5-11; P 179-180, L 24-20). Moreover, Dr. Roemer testified that he fully intended to pay CPG the agreed-upon liquidated damages when he opened his new practice (N.T. P 80, L 16-20) and the reason that he has not done so is because he believes CPG materially breached the agreement, thereby releasing him from this

obligation. He does not claim that the amount assessed in any way was a penalty levied against him. Nevertheless, this Court is further of the opinion that the \$1,000 a month liquidated damages should only be assessed for that period of time during which Dr. Roemer was, in fact, practicing in competition with CPG in the Clearfield area, which amounted to nine months. The Court is of the opinion that to impose this sum against Dr. Roemer beyond the time during which he was in active competition with CPG would indeed amount to a penalty and therefore will award to CPG, on this claim, the sum of \$9,000.

CPG next claims that Dr. Roemer is responsible to reimburse Clearfield Hospital for the guaranteed payments it made to CPG to secure Dr. Roemer's employment, specifically that paragraph on page 1 of the employment agreement which states:

"Should Dr. Roemer leave before the end of the 'Repayment/Forgiveness period' (10-31-05) it is understood that any payments required to the Hospital will be Dr. Roemer's sole responsibility."

In lieu of this Court's ruling that CPG did not commit a material breach of the employment agreement, Dr. Roemer has no defense to this claim and, therefore, must pay to Clearfield Hospital or reimburse CPG for any payments made to said hospital in the amount of \$48,918.08, together with interest at agreed-upon rate.

CPG next claims damages for an alleged breach of loyalty committed by Dr. Roemer. This Court has examined the

transcript in detail and can find no support for this claim and, therefore, will rule in Dr. Roemer's favor thereon.

Finally, CPG claims the sum of \$992.47 resulting from Dr. Roemer's improper termination of three telephone lines which CPG had long been using. This Court can find no justification for Dr. Roemer's actions in this regard and does award to CPG the sum of \$992.47.

Dr. Roemer, as Plaintiff to '01-74-CD, in Count I, seeks declaratory relief from his obligations under the employment agreement alleging that CPG materially breached the contract. As discussed above, this Court has found no material breach by CPG and, therefore, will rule against Dr. Roemer on this issue.

In Count II, Dr. Roemer seeks compensation for the portion of October 2000 that he did, in fact, work for CPG, specifically the first week thereof. This Court agrees and will award to the doctor a one week's proportionate share of his monthly income in the specific amount of \$2,332, plus legal interest thereon.

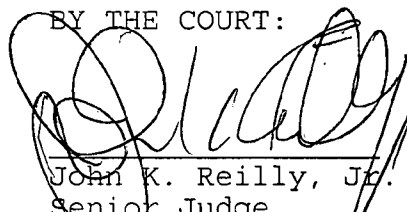
Wherefore, the Court enters the following

#### O R D E R

NOW, this 9th day of December, 2004, following hearing and briefs into the above-captioned actions, it is the

ORDER of this Court that partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.

BY THE COURT:



John K. Reilly, Jr.  
Senior Judge  
Specially Presiding



01-74-CD

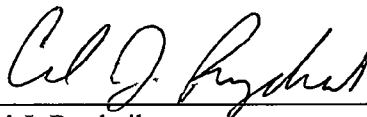
01-87-CD

OK

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Trial Brief was served upon the following individual(s) by first class U.S. Mail this 28 day of September, 2004:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222



Carl J. Rychcik

FILED

NO  
cc

01/31/2004

SEP 29 2004

William A. Shaw  
Prothonotary/Clerk of Courts

(3)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.

Plaintiff/Defendant,

vs.

CLEARFIELD PROFESSIONAL,  
GROUP, LTD.,

Defendant/Plaintiff.

CIVIL DIVISION

NO. 01-74-CD

NO. 01-87-CD

**DEFENDANT'S TRIAL BRIEF**

Filed on behalf of:  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221  
Carl J. Rychcik  
Pa. ID #73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

RECEIVED

SEP 29 2004

COURT ADMINISTRATORS  
OFFICE

01-74-CD

01-87-CD

CA

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Proposed Findings of Fact and Conclusions of Law was served upon the following individual(s) by first class U.S. Mail this 28 day of September, 2004:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Carl J. Rychcik

FILED <sup>16</sup>cc  
013:4261  
SEP 29 2004

William A. Shaw  
Prothonotary/Clerk of Courts

239

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.

Plaintiff/Defendant,

vs.

CLEARFIELD PROFESSIONAL,  
GROUP, LTD.,

Defendant/Plaintiff.

CIVIL DIVISION

NO. 01-74-CD

NO. 01-87-CD

**DEFENDANT'S PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Filed on behalf of:  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221  
Carl J. Rychcik  
Pa. ID #73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**RECEIVED**

**SEP 29 2004**

COURT ADMINISTRATOR'S  
OFFICE

01-74-CJ  
01-87-CJ

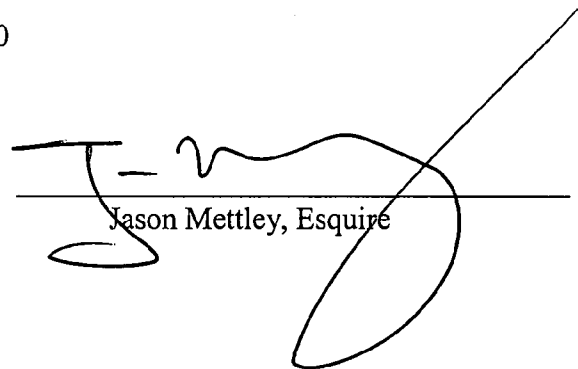
CA

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, M.D., was served upon counsel for defendant this 28<sup>th</sup> day of September, 2004, by first class mail, postage prepaid, addressed as follows:

William L. Stang, Esquire  
Carl J. Rychcik, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

John Sughrue, Esquire  
23 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830

  
\_\_\_\_\_  
Jason Mettley, Esquire

FILED<sup>NO CC</sup>  
0/3:4201  
SEP 29 2004

William A. Shaw  
Prothonotary/Clerk of Courts

#29

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D., )  
)  
Plaintiff ) Nos. 01-74-CD  
) 01-87-CD  
vs. )  
)  
CLEARFIELD PROFESSIONAL )  
GROUP, LTD. )  
)  
Defendant )

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COURT ADMINISTRATOR'S  
OFFICE

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND POST-TRIAL MEMORANDUM OF PAUL B. ROEMER, M.D.**

Plaintiff, Paul B. Roemer, M.D., (hereinafter "Dr. Roemer"), respectfully submits these  
Proposed Findings of Fact, Conclusions of Law, and Post Trial Memorandum:

**I. PROPOSED FINDINGS OF FACT**

1. Paul B. Roemer, M.D. ("Dr. Roemer") obtained a medical degree in 1996 and completed a three-year residency program in 1999. Trial Transcript ("TT"), p. 25.
2. The Clearfield Professional Group ("CPG") is a group medical practice located at 820 Turnpike Avenue in Clearfield, Pennsylvania. TT, p. 28.
3. The CPG services residents of Clearfield County and is primarily associated with the Clearfield Hospital (the "Hospital"). TT, p.28.
4. At all relevant times, Dr. Richard A. Johnson was employed by the CPG and served as the CPG's President, in which capacity Dr. Johnson was responsible for overseeing the business aspects of the group practice including employment issues. TT, p. 123.

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

-VS-

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

No. 01-74-CD

and

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

-VS-

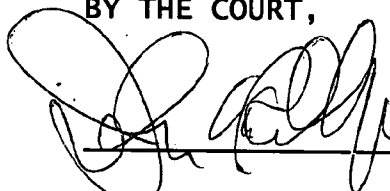
No. 01-87-CD

PAUL B. ROEMER, M.D.

ORDER

NOW, this 14th day of July, 2004, following the completion of Civil Non-Jury Trial, it is the ORDER of this Court that counsel for both parties have no more one (1) week following receipt of the transcript in which to supply the Court with findings of fact and conclusions of law. Counsel shall have no more than three (3) days from receipt thereof to supply the Court with reply brief.

BY THE COURT,



THE HONORABLE JOHN K. REILLY, JR.  
Senior Judge, Specially Presiding

FILED

JUL 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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FILED  
JUL 15 2004

1cc

Atty: Metley, Stang, Rycharik

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

Plaintiff/Defendant,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

CIVIL DIVISION

NO. 01-74-CD  
NO. 01-87-CD

**NOTICE TO ATTEND**

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
Pa. ID # 33221  
Carl J. Rychcik  
Pa. ID # 73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**FILED**

JUN 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

**NOTICE TO ATTEND**


TO: Paul Brian Roemer, M.D.  
c/o Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

1. You are directed to come to Courtroom No. 2 at the Clearfield County Courthouse, Clearfield, Pennsylvania on Wednesday, July 14, 2004 and Thursday, July 15, 2004 starting at 9:00 a.m. each day to testify on behalf of Defendant/Plaintiff Clearfield Professional Group, Ltd. in the above case, and to remain until excused.

2. You are also directed to bring with you the following: (i) complete copies of all lease agreements for professional office space executed by you subsequent to your notice of resignation from Clearfield Professional Group, Ltd. on or about July 13, 2000; (ii) complete copies of all documents relating to any telephone system and/or telephone services for your private medical practice for the period from July 1, 2000 through December 31, 2000; and (iii) copies of all documents relating to any advertisements of your private medical practice for the period from July 1, 2000 through December 31, 2000.

If you fail to attend or to produce the documents or things required by this notice to attend, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,


By:   
William L. Stang  
Pa. ID # 33221  
Carl J. Rychcik  
Pa. ID # 73754  
FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222  
412-391-1334

Counsel for Defendant/Plaintiff  
Clearfield Professional Group, Ltd.,

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice to Attend was served upon the following individual(s) by facsimile and first class U.S. Mail this 23 day of June 2004:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Carl J. Rychcik

FILED

7/1/04  
JUN 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts  
copy in 01-87-02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D., ) CIVIL DIVISION  
 )  
Plaintiff/Defendant ) No. 01-74-CD  
 ) No. 01-87-CD  
vs. )  
 )  
CLEARFIELD PROFESSIONAL )  
GROUP, LTD. )  
 )  
Defendant/Plaintiff )

**FILED**

MAY 11 35  
MAY 17 2004

William A. Shaw  
Prothonotary/Clerk of Courts

No CC  
[Signature]

**ANSWER TO AMENDMENT TO COMPLAINT**

AND NOW COMES the defendant, Paul B. Roemer, M.D., ("Dr. Roemer") by and through his attorneys, Jason Mettley, Esquire, and Jubelirer, Pass & Intrieri, P.C., for answer to the Amendment to Complaint filed by the Clearfield Professional Group, Ltd. herein, and says:

**COUNT V**

**BREACH OF CONTRACT**

49. Denied. The allegation in Paragraph 49 is a statement of incorporation to which no response is required.

50. Admitted in part, denied in part. Dr. Roemer admits there is a Group Recruitment Agreement between the Clearfield Hospital and the Clearfield Professional Group, Ltd. containing provisions relating to Dr. Roemer's salary while employed by the Clearfield Professional Group, Ltd. The remaining allegations in Paragraph 50 refer to the terms of the Group Recruitment Agreement, a written document that speaks for itself. These allegations are thus denied and strict proof is demanded. Dr. Roemer further denies that the document attached

to the Amendment to Complaint as Exhibit 3 is a true and correct copy of the Group Recruitment Agreement.

51. Denied. The allegations in Paragraph 51 refer to the terms of the Group Recruitment Agreement, a written document that speaks for itself. These allegations are thus denied and strict proof is demanded.

52. Denied. The allegations in Paragraph 52 refer to the terms of the Group Recruitment Agreement, a written document that speaks for itself. These allegations are thus denied and strict proof is demanded.

53. Denied. The allegations in Paragraph 53 refer to the terms of the parties' Employment Contract, a written document that speaks for itself. These allegations are thus denied and strict proof is demanded.

54. Denied. Dr. Roemer denies having sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 54. Strict proof is demanded.

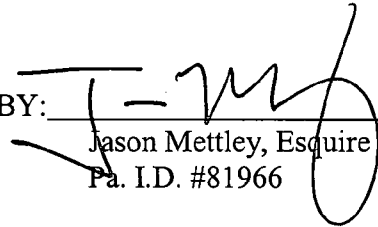
55. Admitted in part, denied in part. Dr. Roemer denies having sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 55, except it is admitted that Dr. Roemer has not paid any amount to indemnify the Clearfield Professional Group, Ltd. for income guarantee payments allegedly made by the Clearfield Hospital. Strict proof is demanded.

56. Denied. The allegations in Paragraph 56 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied.

WHEREFORE, defendant, Paul B. Roemer, M.D., hereby demands judgment in his favor and against plaintiff with costs and attorney's fees to be awarded to defendant.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY:   
Jason Mettley, Esquire  
Pa. I.D. #81966

219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

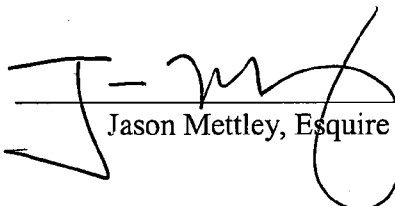
Attorney for Defendant,  
Paul B. Roemer, M.D.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Answer to Amendment to Complaint was served upon counsel for defendant this 12<sup>th</sup> day of May, 2004, by first class mail, postage prepaid, addressed as follows:

William L. Stang, Esquire  
Carl J. Rychcik, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

John Sughrue, Esquire  
23 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830

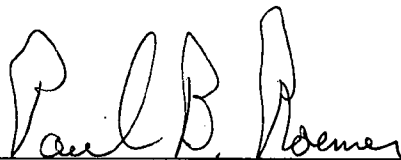
  
Jason Mettley, Esquire



**VERIFICATION**

I, Paul Brian Roemer, M.D., state that I am the Plaintiff in the aforementioned action, and that the facts set forth in the foregoing Answer to Amendment to Complaint are true and correct based upon my personal knowledge or upon my information and belief; and I make this statement subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATED: 5/11/04

A handwritten signature in black ink, appearing to read "Paul B. Roemer", written over a horizontal line.

Paul Brian Roemer, M.D.  
Plaintiff

CPA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

vs.

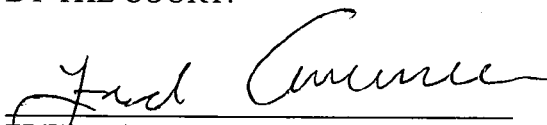
No. 01 - 74 - C.D.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

**ORDER**

AND NOW, this 26 day of April, 2004, it is the ORDER of the Court that Civil Non-Jury Trial in the above matter has been scheduled for **Wednesday, July 14, 2004 and Thursday, July 15, 2004 at 9:00 A.M.**, each day, before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

APR 27 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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04/28/2004  
APR 27 2004

William A. Shaw

Prothonotary/Clerk of Courts

Atty: Mettley, Lyckich, Seifried  
[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Plaintiff,

vs.

PAUL BRIAN ROEMER, M.D.

Defendant.

CIVIL DIVISION

NO. 01-74-CD <sup>7</sup>  
NO. 01-87-CD

AMENDMENT TO COMPLAINT

Filed on behalf of  
Clearfield Professional Group, Ltd.

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221

Carl J. Rychcik  
PA ID # 73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**FILED**

MAR 26 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD PROFESSIONAL GROUP,  
LTD.,

CIVIL DIVISION

Plaintiff,

NO. 01-74-CD

NO. 01-87-CD

vs.

PAUL BRIAN ROEMER, M.D.

Defendant.

**AMENDMENT TO COMPLAINT**

Plaintiff, Clearfield Professional Group, Ltd., by its attorneys, Fox Rothschild LLP, files the following Amendment to Complaint against Defendant, Paul B. Roemer, M.D. pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure.

**COUNT V  
BREACH OF CONTRACT**

49. Paragraphs 1 through 48 of Clearfield Professional Group's Complaint against Paul B. Roemer, M.D. at Case No. 01-87-CD, are incorporated herein as though set forth at length.

50. Clearfield Hospital and Clearfield Professional Group entered into a Group Recruitment Agreement wherein Clearfield Hospital guaranteed that, for the first twelve months of Dr. Roemer's employment with Clearfield Professional Group, Clearfield Hospital would subsidize Dr. Roemer's annual salary of \$125,000.00 (A copy of the Group Recruitment Agreement is attached hereto as Exhibit 3).

51. Under the Group Recruitment Agreement, Clearfield Professional Group is responsible to repay Clearfield Hospital for the guaranteed payments made to Clearfield Professional Group during Dr. Roemer's initial twelve-month period of employment.

52. In the event Dr. Roemer remained with Clearfield Professional Group for a five-year period through October 30, 2005, Clearfield Professional Group's repayment obligation under the Group Recruitment Agreement would be forgiven.

53. Pursuant to the terms of the Employment Contract, Dr. Roemer agreed to indemnify Clearfield Professional Group for the repayment obligation to Clearfield Hospital in the event Dr. Roemer left Clearfield Professional Group before the end of the five-year period.

54. On September 19, 2003, Clearfield Hospital requested that Clearfield Professional Group repay the income guarantee provided by Clearfield Hospital in the amount of \$55,844.11 for principal and interest owed. (A copy of the September 19, 2003 letter from Richard D. Stockley to Dr. Richard A. Johnson is attached hereto as Exhibit 4).

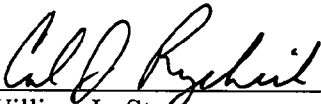
55. Clearfield Professional Group has demanded payment of the \$55,844.11 from Dr. Roemer, in accordance with the terms of the Employment Contract, but Dr. Roemer has refused, without justification, to pay any sums to Clearfield Professional Group.

56. Dr. Roemer's failure to indemnify Clearfield Professional Group for the \$55,844.11 owed to Clearfield Hospital is a material breach of the terms of his Employment Contract.

WHEREFORE, Clearfield Professional Group demands judgment against Paul B. Roemer in an amount in excess of \$20,000.00 plus costs and interest.

Respectfully submitted,

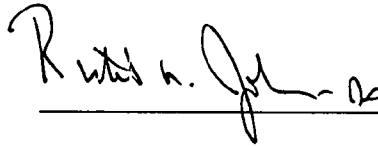
**DATED:** March 25, 2004

  
\_\_\_\_\_  
William L. Stang  
PA I.D. # 33221  
Carl J. Rychcik  
PA I.D. # 73754  
**FOX ROTHSCHILD LLP**  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334  
Counsel for Defendant,  
Clearfield Professional Group, Ltd.

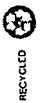
**VERIFICATION**

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

CLEARFIELD PROFESSIONAL GROUP, LTD.

  
\_\_\_\_\_





# GROUP RECRUITMENT AGREEMENT

BY AND BETWEEN

CLEARFIELD HOSPITAL, a nonprofit corporation, organized under the laws of Pennsylvania (hereinafter called "the Hospital")

A  
N  
D

CLEARFIELD PROFESSIONAL GROUP, LTD., a professional corporation organized under the laws of the Commonwealth of Pennsylvania (hereinafter called "the Group")

WITNESSETH:

WHEREAS, the Hospital is organized for the charitable purpose of the promotion of health; and

WHEREAS, in furtherance of this purpose, the Hospital desires to encourage physicians in needed specialties to establish their practices in the community primarily served by it ("the Service Area"); and

WHEREAS, the Hospital has determined that there is a need for the services of certain medical specialties in the Service Area including Internal Medicine; and

WHEREAS, PAUL B. ROEMER, MD is licensed to practice medicine in the Commonwealth of Pennsylvania and has not previously practiced in the Service Area or been affiliated with another hospital in the Service Area; and

WHEREAS, Dr. Roemer desires to specialize in the practice of Internal Medicine in the Service Area; and

WHEREAS, the Hospital has determined that it is in the best interests of the people in said Service Area to provide an income guarantee and other financial incentives sufficient to induce the Dr. Roemer to relocate to the Service Area and permit Dr. Roemer to establish a full-time practice of Internal Medicine in the Service Area; and

WHEREAS, Dr. Roemer intends to practice as an employee of the Group; and

WHEREAS, the Hospital has also determined that if Dr. Roemer chooses to practice with the Group, as opposed to practicing on a solo basis, the Hospital will be better able to achieve its goal of promoting the health of the people in the Service Area by virtue of the cross-coverage and internal peer review that are inherent in group practice.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, and intending to be legally bound hereby, the parties hereto agree as follows:

EXHIBIT

3

## **Section 1. Definitions**

For purposes of this Agreement:

- (a) "Net Practice Income" shall mean all fees collected by the Group on a cash basis for all medical services rendered by Dr. Roemer in the course of his practice during the Guarantee Period, whether billed under the Dr. Roemer's name or not, less Office Expenses of forty percent (40%) of gross cash receipts.
- (b) "Starting Date" shall mean on or about November 1, 1999, provided that the following has occurred: (i) Dr. Roemer has been appointed to the Hospital's active medical staff; (ii) Dr. Roemer has submitted an application for provider numbers and the Group's office has been staffed, equipped and open to see patients; and (iii) at least one advertisement has been run in the local newspaper announcing that Dr. Roemer's office is open and he is accepting patients.
- (c) "Guarantee Period" shall mean the 12 month period commencing on the Starting Date and continuing for a period of 12 months until October 31, 2000.
- (d) "Repayment/Forgiveness Period" shall mean the period commencing on November 1, 2000 and continuing for a period of five years until October 31, 2005.
- (e) "Equipment" shall mean (i) standard equipment needed in the office such as files, typewriters, duplicating equipment, desks, chairs, etc., and (ii) medical equipment reasonably sufficient for the practice of Dr. Roemer's specialty.
- (f) The "Equipment", both medical and office, required for Dr. Roemer to practice medicine is already owned by the Group. It is anticipated that no new equipment will be needed.
- (g) "Office Expenses" shall be accepted as forty percent (40%) of gross cash receipts and shall cover all of the usual expenses of practicing medicine during the guarantee period except malpractice insurance and the cost of books, journals, and continuing medical education.
- (h) "Service Area" shall mean primary and secondary areas of patients serviced by the Hospital as determined in maps.

## **Section 2. Financial Guarantee**

The Hospital guarantees to the Group that the Group will, during each month of the one-year Guarantee Period, receive Net Practice Income for Dr. Roemer of Ten Thousand Four Hundred, Sixteen Dollars and Sixty-Seven Cents (\$10,416.67) [\$125,000.00 annually] (the "Guarantee"). For each calendar month, beginning with the month in which the Starting Date occurs, that Net Practice Income for such month is less than the Guarantee, the Hospital shall advance to the Group the difference between the Guarantee and the amount of Net Practice Income received by the Group for Dr. Roemer during that month. The Group and Dr. Roemer shall make all the financial information deemed necessary by the Hospital to make such calculation available to the Hospital as soon as possible after the end of each month

during the Guarantee Period. The Hospital agrees to make any required advance within 15 days of receipt of such information.

### **Section 3. Signing Bonus**

In addition to the Guarantee, the Hospital shall directly award Dr. Roemer a sign-on bonus of Six Thousand and Two Hundred Dollars (\$6,200.00) due and payable immediately upon signing of this Agreement.

### **Section 4. Educational Loan Forgiveness**

The Hospital shall directly award Dr. Roemer with educational loan forgiveness in the amount of Ten Thousand Dollars (\$10,000.00) per year for ten (10) years. Payment will be awarded at the end of each one-year of service to the Clearfield area providing the Dr. Roemer produces receipt for same. Payment will be made within thirty (30) days after the end of each one-year period of practice within the Clearfield Service Area. Dr. Roemer shall not use these funds for any purpose other than to retire his educational loan obligations. If Dr. Roemer were to join with a competing healthcare facility or group during this ten-year period, then the Hospital has the right to repayment of all monies paid under this Section and all other features of this Agreement automatically terminate. If Dr. Roemer ceases to be an active member of Clearfield Hospital's Medical Staff for any reason, then all future payments are terminated.

### **Section 5. Financial Obligation of the Physician**

- (a) If, in any month during the Guarantee Period, Net Practice Income exceeds the Guarantee, the Hospital will make no payment to the Group.
- (b) During the Guarantee Period, the Group and Dr. Roemer will make a good faith effort to collect all accounts receivable, and hereby grants to the Hospital a security interest in said accounts receivable in an amount equal to the unrepaid balance of the amounts advanced to the Group under the Guarantee. Dr. Roemer shall execute such documents as the Hospital determines may be necessary to perfect that security interest.
- (c) The Group shall execute a Promissory Note at the end of the Guarantee Period evidencing the obligation to repay any amounts advanced under the Guarantee that have not been repaid as of the expiration or termination of the Guarantee Period. Provided, however, that for each month during the Repayment/Forgiveness Period that Dr. Roemer maintains a full-time practice in the Service Area and continues to fulfill the Community Service Obligations set forth in the Agreement, the Hospital shall forgive the amount owed to it in the next monthly installment due under the Promissory Note and each month release Dr. Roemer and the Group from any repayment obligation for that installment. If Dr. Roemer ceases to comply with any provision of this Agreement prior to the end of the Repayment/Forgiveness Period, the remaining payments still due and owing to the Hospital shall not be forgiven and shall be repaid in accordance with Section 5(d).

- (d) The terms of the Promissory Note shall include language as follows:  
For value received, and intending to be legally bound, the Group promises to pay to the order of the Hospital the principal sum equal to the total amount advanced to the Group by the Hospital but not repaid to the Hospital pursuant to the Agreement between the Group and the Hospital, the Starting Day of which is November 1, 2000, plus all interest due thereon, as said amount is reflected on the books of the Hospital. The Hospital shall give written notice to the Group of the amount so owed as of the date of expiration or termination of the Guarantee Period. Terms used in the Note shall have the same meanings as set forth in this Agreement. Principal and interest shall be paid in sixty (60) equal monthly installments beginning on the first day of the Repayment/Forgiveness Period and on the first day of each subsequent month thereafter, subject to forgiveness provisions contained in this Agreement. Interest shall begin to accrue on November 1, 2000. The rate of said interest shall be the prime interest rate plus one percentage point (1%) as reported in the last edition of the Wall Street Journal published and shall remain at said rate for the term of the Promissory Note. Said interest shall be due and payable along with the principal. A schedule of installment payments actually due shall be prepared by the Hospital and transmitted to the Group on or before the date that the first payment is due. After maturity, interest shall accrue at the interest rate specified above until all sums due hereunder are paid. So long as the Hospital is the holder hereof, the Hospital's book and records shall evidence at all times all amounts outstanding under the Note and the date and amount of each advance and payment made pursuant hereto. This prompt and faithful performance of all of the Group's obligations hereunder, including, without limitation, time of payment, shall be of the essence of the Promissory Note.
- (e) The Group hereby warrants that neither the Group nor Dr. Roemer has ever declared bankruptcy. Dr. Roemer and the Group shall not use this Agreement or the amounts due hereunder as collateral for any other debt, loan or obligation without the prior written consent of the Hospital. Creditors of Dr. Roemer and the Group shall not have recourse against the Hospital with respect to any debt, loan or obligation of Dr. Roemer or the Group.
- (f) The financial terms of this Agreement, including the amounts of any and all advances and reimbursements to the Group, shall be strictly confidential. The Group and Dr. Roemer shall not discuss the financial terms of this Agreement with or otherwise disclose or communicate its contents to any person or entity other than their attorneys, financial advisors or accountants without the express written consent of the Hospital, unless compelled by subpoena or other legal process.

#### Section 6. Relocation Expenses

Dr. Roemer shall be responsible for his own relocation expenses.

## **Section 7. Professional Liability Insurance**

During the guarantee period, the Hospital shall provide Dr. Roemer with professional liability insurance with tail coverage with basic limits in the amounts of \$900,000/\$300,000 with excess coverage in at least the limits available through the Pennsylvania Catastrophe Fund, but otherwise as required of all members of the Hospital's Medical Staff. The Group or Dr. Roemer shall be responsible for insurance after the guarantee period.

## **Section 8. Reporting of Payments**

The Hospital shall report to the Internal Revenue Service and to such state and local taxing authorities as may be applicable, any income realized by the Physician pursuant to this Agreement as required by law, pursuant to IRS Form 1099 or similar forms used for such purposes.

## **Section 9. No Requirement to Make Referrals**

- (a) There is no requirement that Dr. Roemer or the Group make referrals to, be in a position to make referrals to, or otherwise generate business for the Hospital as a condition of receiving the benefits hereunder.
- (b) The Group shall not restrict or prohibit from establishing staff privileges at, referring any service to, or otherwise generating any business for any entity besides the Hospital of Dr. Roemer's choosing.
- (c) The amount or value of the recruitment benefits provided by the Hospital hereunder shall not vary (or be adjusted or renegotiated) based on the volume or value of any expected referrals to, or business otherwise generated for, the Hospital or its affiliates.

## **Section 10. Community Service Obligations of the Physician**

In order to carry out the purpose of this Agreement, which is to make needed medical services more readily available to the people within the Service Area, the Group shall require Dr. Roemer to comply with the following Community Service Obligations:

- (a) Dr. Roemer shall:
  - (i) Meet and continue to meet the criteria for active medical staff appointment as set forth in the Hospital's Medical Staff Bylaws;
  - (ii) Apply for and maintain clinical privileges to practice Internal Medicine commensurate with the procedures that he shall be performing at the Hospital

- (iii) Comply with the Bylaws, Rules and Regulations, Policies and Procedures of the Hospital and its medical staff;
- (iv) Exercise that standard of skill, diligence, and regularity as generally applicable to the practice of Internal Medicine in the Service Area;
- (v) Obtain and/or maintain a license to practice medicine in Pennsylvania and current unrestricted narcotics registration from the DEA; and
- (vi) Obtain and/or maintain board certification in Internal Medicine.

In the event that Dr. Roemer fails to meet any of the above requirements, this Agreement shall automatically terminate.

- (b) The Group is an independent contractor and shall conduct its independent practice of Internal Medicine in the Service Area. However, in order to fulfill the community need for which Dr. Roemer was recruited to the Service Area, during the Term of this Agreement the Group shall require Dr. Roemer to provide patient services within the Service Area of the Hospital on a full-time (40 hour-per-week) basis. The Group will also limit Dr. Roemer's vacation and educational leave time to two weeks of vacation time annually and one week of continuing medical education time.
- (c) In order to assure adequate access to care by patients in the Hospital's Service Area, Dr. Roemer shall execute such agreements as may be necessary to become, and shall remain, a participating provider in the federal Medicare program, the Pennsylvania Medicaid program. Dr. Roemer shall also participate in the Hospital's call roster and shall treat any patients referred or assigned pursuant to the Hospital's Emergency Department or service on-call rosters, regardless of the insurance status of such patients or their ability to pay. In the event that Dr. Roemer's participation in Medicare or Medicaid terminates for any reason or he is otherwise excluded or precluded from participation in either of those programs, this Agreement shall automatically terminate.

#### **Section 11. Independent Contractor**

In the performance of all obligations hereunder, the Group and Dr. Roemer shall be deemed to be independent contractors and not employees of the Hospital and the Hospital shall not withhold, or in any way be responsible for, the payment of any federal, state or any local income or wage taxes, F.I.C.A. taxes, unemployment compensation, or workers' compensation contributions, vacation pay, sick leave, retirement benefits, or any other payments for or on their behalf. The Group shall indemnify and hold the Hospital harmless from any and all loss or liability arising with respect to such payments, withholdings, and benefits.

#### **Section 12. Billing for Professional Services**

- (a) Billing for professional services rendered by Dr. Roemer shall be the responsibility of the Group.

- (b) During the Guarantee Period and period of forgiveness thereafter, the Hospital reserves the right to retain its own accountant to verify the billings, receipts, revenues and expenses attributable to Dr. Roemer's practice and such other information necessary to effectuate the terms of this Agreement, and Dr. Roemer and the Group shall permit the Hospital and its designated accountant to have access to this information.

### **Section 13. Termination**

- (a) This Agreement shall expire at the end of the Term of this Agreement, provided, however, Dr. Roemer's obligations described in Section 5 of this Agreement shall not be affected by the termination or expiration of this Agreement.
- (b) The Hospital and the Group shall each have the right to terminate this Agreement by giving written notice to the other party of material breach of any term(s) of this Agreement (effective on the date stated in the notice which must be at least 45 days after its receipt by the party in material breach) if the party in material breach fails to cure the material breach(es) prior to the termination date stated in said notice.
- (c) In the event that (i) the Hospital terminates this Agreement due to material breach by the Group or Dr. Roemer, (ii) the Group or Dr. Roemer terminates this Agreement for a reason other than those specified in Section 10(a), 10(b), or 10(c) the Agreement automatically terminates, then the entire amount advanced pursuant to Section 2 of this Agreement, plus all applicable interest, less any repayments made by the Group, less any forgiveness prior to the effective date of said termination, shall be repaid to the Hospital by the Group in accordance with Section 5 (c) and (d).
- (d) In the event of Dr. Roemer's death, disability, or any other circumstance that prevents Dr. Roemer from practicing medicine full-time, the Agreement shall automatically terminate.
- (e) In the event:
- (i) of the termination of this Agreement pursuant to this Section;
  - (ii) of the termination of this Agreement due to the Hospital's material breach of this Agreement; or
  - (iii) the Group or Dr. Roemer cannot perform the covenants of this Agreement due to unforeseen circumstances beyond the Group's or Dr. Roemer's control, as judged solely by the Hospital,

The Group shall repay the entire amount advanced pursuant to Section 2 of this Agreement, plus all applicable interest, less any repayments made by the Group, less any forgiveness prior to the effective date of said termination pursuant to Section 5 (c).



- (f) This Agreement and all of its terms and conditions shall terminate automatically in the event the Group repays all of the advances made by the Hospital pursuant to Section 2 of this Agreement, plus any applicable interest.

#### **Section 14. Compliance with Law**

- (a) The parties shall comply with all applicable statutes, rules, regulations and standards of any and all governmental authorities and regulatory and accreditation bodies.
- (b) The forgiveness provisions and other benefits provided hereunder shall only be effective to the extent not prohibited by law and to the extent they do not adversely affect the Hospital's tax-exempt status.
- (c) In the event the Hospital determines that this Agreement is illegal or inconsistent with the Hospital's tax-exempt status, the forgiveness provision shall have no force and effect and the full amount of the outstanding balance shall be repaid to the Hospital in accordance with Section 5 (c).

#### **Section 15. Jurisdiction**

This Agreement shall be construed and enforced under, and in accordance with, the laws of Pennsylvania.

#### **Section 16. Assignment**

This Agreement may not be assigned by either party, without the express written consent of the other.

#### **Section 17. Amendments**

This Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be operative or valid it shall have been reduced to writing and signed by both parties.

#### **Section 18. Medicare Access to Books and Records**

In the event, and only in the event, that Section 952 of P.L. 96-499 (42 U.S.C. Section 1395x(v)(1)(1)) is applicable to this Agreement, the Group agrees as follows:

- (a) Until the expiration of four years after the furnishing of such services pursuant to this Agreement, the Group shall make available, upon written request from the Secretary of the federal Department of Health and Human Services or upon request from the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, any of the Group's books, documents and records that are necessary to certify the nature and extent of the cost of services provided pursuant to this Agreement; and
- (b) If the Group carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary of the federal Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, any books, documents and records of such organization that are necessary to verify the nature and extent of the cost of services provided pursuant to said subcontract.

#### **Section 19. Medical Record Documentation**

Every practitioner on the Medical Staff of Clearfield Hospital is responsible for completion of all of his/her medical record documentation prior to leaving the Medical Staff with the exclusion of an emergency situation. Failure to do so is considered a direct violation of the Medical Staff Bylaws of Clearfield Hospital, which is reportable to the National Practitioners Data Bank.

#### **Section 20. Strict Performance**

No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and Term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

#### **Section 21. Entire Agreement**

There are no other agreements or understandings, either oral or written, between the parties affecting this Agreement, except as otherwise specifically provided for or referred to herein. This Agreement cancels and supersedes all previous agreements between the parties relating to the subject matter covered by this Agreement.

**Section 22. Invalidity or Unenforceability of Particular Provisions**

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**Section 23. Compliance Programs**

The Group and Dr. Roemer shall cooperate with any and all corporate compliance programs now or hereafter instituted by the Hospital.

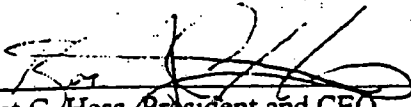
**Section 24. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture, or any association between the parties.

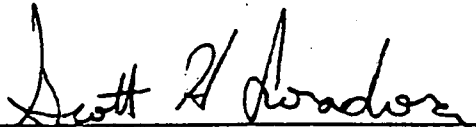
IN WITNESS WHEREOF, the parties have caused this Agreement to become effective the day and year first written above.

**SIGNED**

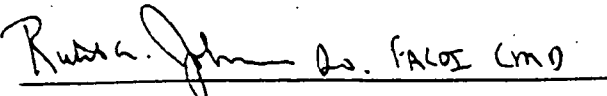
**CLEARFIELD HOSPITAL**

  
\_\_\_\_\_  
Kent C. Hess, President and CEO

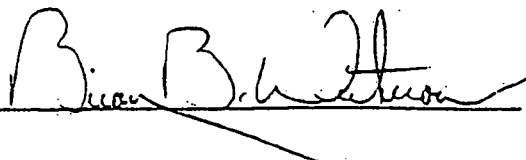
Date: 26 OCT 99

Witness:   
\_\_\_\_\_

**CLEARFIELD PROFESSIONAL GROUP, LTD.**

  
\_\_\_\_\_  
Ruth A. Johnson, Esq., FALCSE (CMO)

Date: October 26, 1999

Witness:   
\_\_\_\_\_





## Clearfield Hospital

---

September 19, 2003

Dr. Richard A. Johnson, D.O.  
Clearfield Professional Group, Ltd.  
820 Turnpike Avenue  
Clearfield, PA 16830

Re: Dr. Paul Roemer's Income Guarantee

Dear Dr. Johnson:

Clearfield Hospital entered into a Group Recruitment Agreement with the Clearfield Professional Group, Ltd. dated October 26, 1999. We provided assistance to your group, through an income guarantee, in the recruitment of Dr. Paul Roemer. The amount of the income guarantee to Dr. Roemer was \$48,918.08. As stated in Section 5(c), if Dr. Roemer ceases to comply with any provision of the Agreement prior to the end of the Repayment/Forgiveness Period, the remaining payments still due and owing to the Hospital shall not be forgiven and shall be repaid in accordance with Section 5(d). Since Dr. Roemer did not maintain his practice in the Clearfield area after the end of the Guarantee Period, the amount of the income guarantee is to be repaid to Clearfield Hospital. To date we have not received any payments on this outstanding balance.

The total amount of principal and interest outstanding as of October 1, 2003 is \$55,844.11. Please contact me to arrange repayment of this outstanding obligation.

Sincerely,

Richard D. Stockley  
Chief Financial Officer

CC: Kent C. Hess, President and CEO

809 TURNPIKE AVENUE • P.O. BOX 992 • CLEARFIELD, PA 16830  
(814) 765-5341 • [www.clearfieldhosp.org](http://www.clearfieldhosp.org)

EXHIBIT

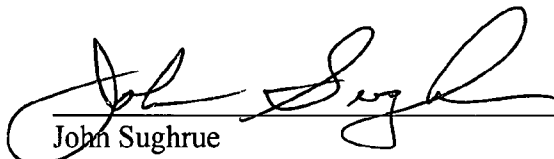
tabbies

4

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amendment to Complaint  
was served upon the following by first class Mail this 26 day of March, 2004:

Jason Mettley, Esquire  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
John Sughrue

FILED

011:49 AM 10060000

MAR 26 2004

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22A

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

:

VS.

: NO. 01-74-CD

CLEARFIELD PROFESSIONAL

:

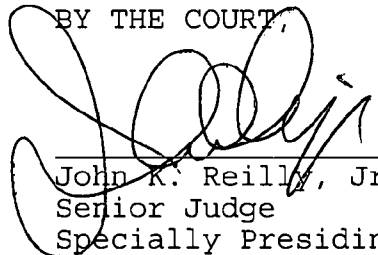
GROUP, LTD.

:

O R D E R

NOW, this 24th day of March, 2004, upon consideration of Petition for Permission to File Amendment to Complaint filed on behalf of Clearfield Professional Group, Ltd., and argument thereon, it is the ORDER of this Court that said Petition be and is hereby granted and Clearfield Professional Group, Ltd., directed to file said amended complaint forthwith.

BY THE COURT,

  
John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

FILED

MAR 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

#22



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

PAUL BRIAN ROEMER, M.D.,  
Plaintiff/Defendant

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,  
Defendant/Plaintiff

NO. 01-74-CD

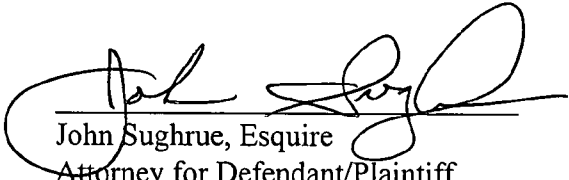
NO. 01-87-CD

**PRAECIPE FOR APPEARANCE**

TO WILLIAM A. SHAW, PROTHONOTARY.

Kindly enter my appearance on behalf of Clearfield Profession Group, LTD, Plaintiff, as **Co-Counsel** with William L. Stang, Esq., and Cark J. Rychcik, Esq., of Fox – Rothschild whose appearance was previously entered in the above-captioned matter. Please include the undersigned in the service of all orders, pleadings and matters concerning the foregoing.

Date: March 16, 2004

  
John Sughrue, Esquire  
Attorney for Defendant/Plaintiff  
Attorney I. D. #01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**FILED**

**MAR 16 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

#21

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on March 16, 2004, I caused a true and correct copy of Affidavit of Service to be served on the following and in the manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Mr. Jason Mettley, Esq.  
JUBELIRER, PASS & INTRIERI, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

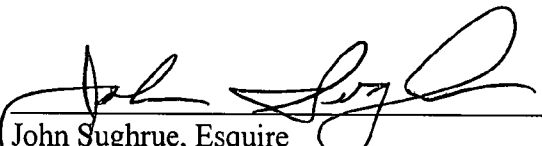
Mr. William L. Stang, Esq.  
Mr. Carl Rychcik, Esq.  
FOX, ROTHSCILD  
625 Liberty Blvd., 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

**By Personal Service/Hand Delivery**

Dave Meholick, Court Administrator  
CLEARFIELD COUNTY COURTHOUSE  
1 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830

Honorable John K. Reilly, Judge  
CLEARFIELD COUNTY COURTHOUSE  
1 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830

Date: March 16, 2004

  
John Sughrue, Esquire  
Attorney for Defendant/Plaintiff  
Clearfield Professional Group, LTD

FILED

3cc

Of 3:00 PM  
MAR 16 2004

William A. Shaw  
Prothonotary/Clerk of Courts

Atty Sughrue

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

:  
:  
: No. 01-74-CD 7  
: No. 01-87-CD  
:  
:

**ORDER**


AND NOW, this 10<sup>th</sup> day of March, 2004, it is the ORDER of the Court that argument on Attorney Stang's Petition for Permission to File Amendment to Complaint in the above matter has been scheduled for **Wednesday, March 24, 2004 at 10:00 A.M.**, before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

**FILED**

MAR 11 2004

William A. Shaw  
Prothonotary

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

10.13.88 1cc Atty Matthey  
1cc Atty Stang

MAR 11 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D., ) CIVIL DIVISION  
 )  
Plaintiff/Defendant ) No. 01-74-CD  
 ) No. 01-87-CD  
vs. )  
 )  
CLEARFIELD PROFESSIONAL )  
GROUP, LTD. )  
 )  
Defendant/Plaintiff )

FILED

MAR 08 2004

William A. Shaw  
Prothonotary/Clerk of Courts  
I sent to Amy

**ANSWER TO PETITION FOR  
PERMISSION TO FILE AMENDMENT TO COMPLAINT**

AND NOW COMES Paul B. Roemer, M.D., ("Dr. Roemer") by and through his attorneys, Jason Mettley, Esquire, and Jubelirer, Pass & Intrieri, P.C., to file this Answer to Petition for Permission to File Amendment to Complaint and Request for Rule to Show Cause, and says:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. Dr. Roemer denies having sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 4.
5. Denied. The allegations in Paragraph 5 refer to the terms of the Employment Contract, a written document that speaks for itself.
6. Dr. Roemer admits having been served on or about October 16, 2003, with a copy of what appears to be a letter dated September 19, 2003, from the Clearfield Hospital. Dr.

Roemer further denies that the CPG raised any issue regarding the income guarantee payments in its motion for summary judgment, but admits that the CPG did raise the issue in its brief in support of summary judgment, filed on or about October 28, 2003. By way of further answer, this was the first time the CPG made a claim that Dr. Roemer was obligated to pay any amount of income guarantee payments.

7. Dr. Roemer admits that on December 16, 2003 this Honorable Court ruled on the parties' cross-motions for summary judgment, granting summary judgment to Dr. Roemer on the CPG's claim for punitive damages, and granting summary judgment to the CPG on Dr. Roemer's claim for punitive damages.

8. Admitted in part and denied in part. Dr. Roemer admits he has not paid the CPG any amount of money demanded by the CPG. The remaining allegations in Paragraph 8 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied.

9. Admitted. By way of further answer, this case was scheduled for jury trial on the 2004 Winter Civil Trial List after the CPG filed a Praecipe for a Trial Date on or about July 29, 2003. The case was removed from the Winter Civil Trial List after the CPG sought a continuance on or about December 31, 2003, so that new counsel could prepare for trial. The parties, with the court's intervention, stipulated on January 14, 2004, to submit these actions to a bench trial in April of 2004.

10. Denied. Paragraphs 25 through 27 of the CPG's complaint, asserting the CPG's action for breach of contract, demonstrate exactly what the CPG had sued Dr. Roemer for, and the Complaint simply does not assert a claim for any income guarantee payments the CPG received from the Hospital. By way of further answer, and as a matter of common sense, if the

CPG's Complaint had adequately notified Dr. Roemer of the CPG's claim for income guarantee payments in the first place then there would be no need to amend the complaint now. The CPG *never* communicated anything resembling a written demand that Dr. Roemer repay these moneys until it summarily asserted such a claim on pages 9-11 of its Brief in Support of Summary Judgment, filed on or about October 28, 2003. Dr. Roemer observed in his Memorandum of Law in Opposition to the CPG's motion for summary judgment, filed on or about November 11, 2003, that the CPG had not pled the matter in its Complaint. *See:* page 6, n. 3. Still, the CPG waited until February 2004, to seek leave to amend.

11. Denied. Until the filing of the instant petition, Dr. Roemer did not know what the CPG's intentions were regarding the income guarantee payments. This lack of knowledge is the direct consequence of the CPG's failure to make its intentions known by asserting this claim or demanding payment. While Dr. Roemer's counsel did ask the CPG's president general questions about the Group Recruitment Agreement during his deposition, this was because the Clearfield Hospital had sent Dr. Roemer a written demand for repayment of the income guarantee just a few months prior to the deposition. Dr. Roemer subsequently sent the Hospital a written response that he was not liable to repay the income guarantee payments. Dr. Roemer provided copies of both of these documents to the CPG during discovery. Not another word about the matter was heard from either the CPG or the Hospital. Dr. Roemer further denies that he would not suffer prejudice by the CPG's proposed amendment because he has been deprived of the opportunity to engage in discovery regarding two (2) critically important factual matters raised by the CPG's proposed amendment: 1) the actual amount of income guarantee payments made by the Clearfield Hospital to the CPG, if any; and, 2) whether any income guarantee payments made were in the proper amounts as defined by the provisions of the Group Recruitment



Agreement. Dr. Roemer would be prejudiced if this claim were allowed because he has been deprived of an opportunity to engage in needed discovery to evaluate the evidence available to dispute the amount of the CPG's proposed claim.

12. Denied. The allegations in Paragraph 12 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied.

13. Dr. Roemer admits that he has not consented to the CPG's proposed amendment.

14. Dr. Roemer opposes the CPG's request for leave to amend its complaint to add the count of indemnification for the income guarantee payments, for the reasons stated herein as well as in his accompanying Brief.

WHEREFORE, Paul B. Roemer, M.D., hereby demands that the CPG's Petition for Leave to Amend Complaint be denied.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire  
Pa. I.D. #81966


219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

Attorney for Plaintiff/Defendant,  
Paul B. Roemer, M.D

**VERIFICATION**

I, Paul Brian Roemer, M.D., state that I am the Plaintiff in the aforementioned action, and  
that the facts set forth in the foregoing ANSWER TO PETITION FOR PERMISSION TO FILE  
AMENDMENT TO COMPLAINT  
are true and correct based upon my personal knowledge or upon my information and belief; and I  
make this statement subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn  
falsification to authorities.

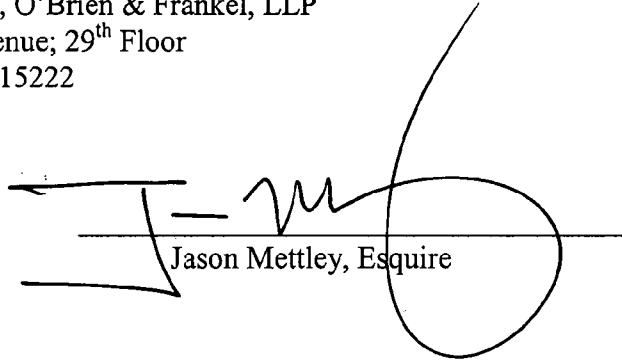
DATED: March 5, 2004

  
\_\_\_\_\_  
Paul Brian Roemer, M.D.  
Plaintiff

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Answer to Petition for Permission to File Amendment to Complaint was served upon counsel for defendant this 5<sup>th</sup> day of March, 2004, by first class mail, postage prepaid, addressed as follows:

William L. Stang, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Jason Mettley, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

PAUL BRIAN ROEMER, M.D.,  
Plaintiff/Defendant

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,  
Defendant/Plaintiff

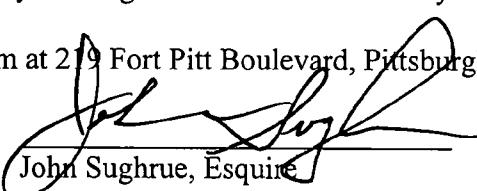
NO. 01-74-CD

NO. 01-87-CD

**AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

The undersigned, John Sughrue, Attorney, Agent for William L. Stang, Esq., and Clearfield Professional Group, Ltd., in the above-captioned matter, being duly sworn according to law, deposes and says that he caused a true and correct copy of **Order/Rule to Show Cause** dated 19<sup>th</sup> day of February, 2004 and **Petition/Motion for Permission to Amend Complaint** filed 19<sup>th</sup> day of February, 2004, to be served on **Plaintiff/Defendant Paul Brian Roemer, M.D.** through Jason Mettley, Esq., his attorney of record, by sending the same on the 20<sup>th</sup> day of February, 2004, first class mail, postage prepaid to him at 219 Fort Pitt Boulevard, Pittsburgh, PA 15222.

  
John Sughrue, Esquire  
Agent for William L. Stang, Esq.  
Attorney for Plaintiff,  
Clearfield Professional Group, LTD

Sworn to and subscribed before me this 20<sup>TH</sup> day of February, 2004.

  
Notary Public

**FILED**

My Commission Expires:



FEB 20 2004

William A. Shaw  
Prothonotary

#18

**CERTIFICATE OF SERVICE**

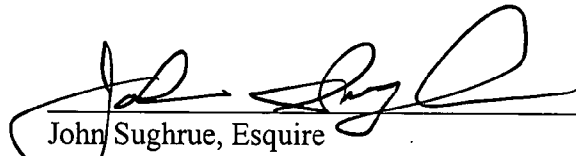
AND NOW, I do hereby certify that on February 20, 2004, I caused a true and correct copy of Affidavit of Service to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Jason Mettley, Esq.  
JUBELIRER, PASS & INTRIERI, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Mr. William L. Stang  
FOX, ROTHCHILD  
625 Liberty Blvd., 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

Date: February 20, 2004

  
John Sughrue, Esquire  
Agent for William L. Stang, Esq.  
Attorney for Plaintiff,  
Clearfield Professional Group, LTD

FILED

6 342 3cc to city

FEB 20 2004

Key

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

PAUL BRIAN ROEMER, M.D.,  
Plaintiff/Defendant

NO. 01-74-CD

vs.

NO. 01-87-CD

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,  
Defendant/Plaintiff

**ORDER**

AND NOW, to wit: this 19 day of February, 2004, upon consideration of the attached **Petition for Permission to file Amended Complaint**, a Rule is hereby issued upon PAUL BRIAN ROEMER, M.D., to show cause, if any, why the prayer of the Petition should not be granted.

**RULE RETURNABLE** on the 8 day of March, 2004, for filing written response.

**NOTICE**

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following petition, you must do so by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so, the case may proceed without you and an order for relief requested by the Petitioner or Movant. You may lose rights important to you.

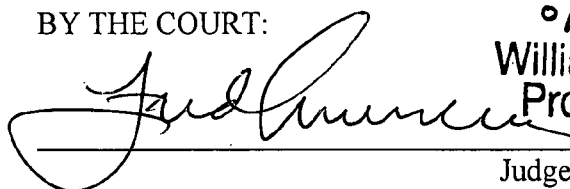
**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Court Administrator's Office  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641, Ext. 32

**FILED**

FEB 19 2004

BY THE COURT:

  
Judge

01/4:00/1  
William A. Shaw  
Prothonotary

LCER TO H77  
Suzanne

#17

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD /

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

**PETITION FOR PERMISSION TO FILE  
AMENDMENT TO COMPLAINT AND  
REQUEST FOR RULE TO SHOW CAUSE**

Defendant/Plaintiff.

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
Pa. ID # 33221  
Carl J. Rychcik  
Pa. ID # 73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**FILED**

FEB 19 2004

01/4:04 am  
William A. Shaw  
Prothonotary  
1 copy to Atty General

#110



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD ,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

**PETITION FOR PERMISSION TO FILE AMENDMENT TO  
COMPLAINT AND REQUEST FOR RULE TO SHOW CAUSE**

Pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure, Clearfield Professional Group, Ltd. ("CPG"), Defendant at Civil Action Number 01-74-CD/Plaintiff at Civil Action Number 01-87-CD, through its counsel, Fox Rothschild LLP, files the following Petition for Permission to File Amendment to Complaint and Request for Rule to Show Cause:

1. On January 16, 2001, Paul Brian Roemer ("Roemer") filed an action against CPG asserting claims for: (i) declaratory relief relating to Roemer's Employment Contract with CPG; (ii) quantum meruit for services allegedly provided by Roemer to CPG in October 2000; (iii) tortious interference with prospective contractual relations; and (iv) punitive damages.

2. On January 17, 2001, CPG filed its own Complaint asserting claims against Roemer for: (i) breach of Roemer's Employment Contract with CPG; (ii) breach of Roemer's duty of loyalty owed to his employer; (iii) misappropriation of CPG's property; and (iv) punitive damages.

3. The two actions have been consolidated.

4. On September 19, 2003, Clearfield Hospital made a written demand for CPG to repay subsidized income guarantee payments for Roemer, which had been provided by Clearfield Hospital to CPG, in the amount of \$55,844.11, for principal and interest owed. This was the first time that such a demand was made by Clearfield Hospital.

5. Pursuant to the terms of his Employment Contract, Roemer agreed to indemnify CPG for the repayment obligation to Clearfield Hospital in the event Roemer left CPG before the end of an initial five-year period.

6. Within a month of receiving the demand from Clearfield Hospital, CPG informed Roemer that this demand had been made, and provided to Roemer's counsel a copy of Clearfield Hospital's letter. This matter and the damages alleged were also raised in CPG's Motion for Summary Judgment filed on October 28, 2003.

7. The parties' cross motions for summary judgment have only recently been ruled upon, with the only dispositive result being the dismissal of both parties' claims for punitive damages.

8. Despite the terms of the Employment Contract, Roemer has refused to pay CPG the amount demanded by Clearfield Hospital. Roemer's failure to indemnify CPG for the \$55,844.11 owed to Clearfield Hospital is a material breach of the terms of his Employment Contract.

9. The present case has not yet been set for trial.

10. Roemer and his counsel have been on notice since the filing of CPG's Complaint that CPG views Roemer to be in breach of his Employment Contract and that he would be responsible for all resulting damages from the termination of his employment.

11. Roemer and his counsel have long been familiar with the provisions of his Employment Contract and the possibility that Clearfield Hospital would seek recovery of the income guarantee amounts paid to CPG, as well as the fact that CPG would then in turn seek indemnification from Roemer. In fact, this was clearly an area of inquiry from Roemer's counsel during the discovery in this case. Therefore, Roemer would not be prejudiced by CPG amending its Complaint at this time.

12. Furthermore, the statute of limitations on CPG's claims against Roemer for indemnification for the amounts owed to Clearfield Hospital has not expired and CPG could bring a separate action against Roemer to recover these amounts. However, given the relation to the matters at issue in this case, and as a matter of judicial economy, CPG would prefer to resolve all of these issues at the same time.

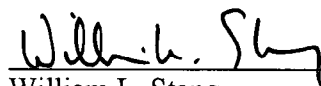
13. Despite all of the above factors, Roemer and his counsel have refused to consent to CPG's proposed Amendment to Complaint.

14. Therefore, CPG respectfully requests leave of Court to file its Amendment to Complaint, in the form attached hereto as Exhibit "A."

WHEREFORE, CPG respectfully requests that this Court issue a rule to show cause why the relief requested herein should not be granted and thereafter to grant CPG leave to file its Amendment to Complaint.

**DATED:** February 18, 2004

Respectfully submitted,



William L. Stang

Pa. ID # 33221

Carl J. Rychcik

Pa. ID # 73754

625 Liberty Avenue, 29th Floor

Pittsburgh, PA 15222

412-391-1334

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Plaintiff,

vs.

PAUL BRIAN ROEMER, M.D.

Defendant.

CIVIL DIVISION

NO. 01-74-CD

NO. 01-87-CD

AMENDMENT TO COMPLAINT

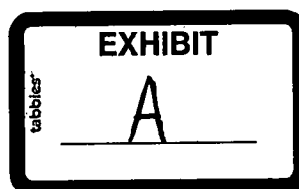
Filed on behalf of  
Clearfield Professional Group, Ltd.

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221

Carl J. Rychcik  
PA ID # 73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD PROFESSIONAL GROUP,  
LTD.,

CIVIL DIVISION

Plaintiff,

NO. 01-74-CD

NO. 01-87-CD

vs.

PAUL BRIAN ROEMER, M.D.

Defendant.

**AMENDMENT TO COMPLAINT**

Plaintiff, Clearfield Professional Group, Ltd., by its attorneys, Fox Rothschild LLP, files the following Amendment to Complaint against Defendant, Paul B. Roemer, M.D. pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure.

**COUNT V  
BREACH OF CONTRACT**

49. Paragraphs 1 through 48 of Clearfield Professional Group's Complaint against Paul B. Roemer, M.D. at Case No. 01-87-CD, are incorporated herein as though set forth at length.

50. Clearfield Hospital and Clearfield Professional Group entered into a Group Recruitment Agreement wherein Clearfield Hospital guaranteed that, for the first twelve months of Dr. Roemer's employment with Clearfield Professional Group, Clearfield Hospital would subsidize Dr. Roemer's annual salary of \$125,000.00 (A copy of the Group Recruitment Agreement is attached hereto as Exhibit 3).

51. Under the Group Recruitment Agreement, Clearfield Professional Group is responsible to repay Clearfield Hospital for the guaranteed payments made to Clearfield Professional Group during Dr. Roemer's initial twelve-month period of employment.

52. In the event Dr. Roemer remained with Clearfield Professional Group for a five-year period through October 30, 2005, Clearfield Professional Group's repayment obligation under the Group Recruitment Agreement would be forgiven.

53. Pursuant to the terms of the Employment Contract, Dr. Roemer agreed to indemnify Clearfield Professional Group for the repayment obligation to Clearfield Hospital in the event Dr. Roemer left Clearfield Professional Group before the end of the five-year period.

54. On September 19, 2003, Clearfield Hospital requested that Clearfield Professional Group repay the income guarantee provided by Clearfield Hospital in the amount of \$55,844.11 for principal and interest owed. (A copy of the September 19, 2003 letter from Richard D. Stockley to Dr. Richard A. Johnson is attached hereto as Exhibit 4).

55. Clearfield Professional Group has demanded payment of the \$55,844.11 from Dr. Roemer, in accordance with the terms of the Employment Contract, but Dr. Roemer has refused, without justification, to pay any sums to Clearfield Professional Group.

56. Dr. Roemer's failure to indemnify Clearfield Professional Group for the \$55,844.11 owed to Clearfield Hospital is a material breach of the terms of his Employment Contract.

WHEREFORE, Clearfield Professional Group demands judgment against Paul B.

Roemer in an amount in excess of \$20,000.00 plus costs and interest.

Respectfully submitted,

**DATED:** \_\_\_\_\_, 2004

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William L. Stang  
PA I.D. # 33221  
Carl J. Rychcik  
PA I.D. # 73754  
**FOX ROTHSCHILD LLP**  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334  
Counsel for Defendant,  
Clearfield Professional Group, Ltd.

**VERIFICATION**

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

**CLEARFIELD PROFESSIONAL GROUP, LTD.**

*R. W. Jones*



# **GROUP RECRUITMENT AGREEMENT**

**BY AND BETWEEN**

**CLEARFIELD HOSPITAL**, a nonprofit corporation, organized under the laws of Pennsylvania (hereinafter called "the Hospital")

A  
N  
D

**CLEARFIELD PROFESSIONAL GROUP, LTD.**, a professional corporation organized under the laws of the Commonwealth of Pennsylvania (hereinafter called "the Group")

**WITNESSETH:**

WHEREAS, the Hospital is organized for the charitable purpose of the promotion of health; and

WHEREAS, in furtherance of this purpose, the Hospital desires to encourage physicians in needed specialties to establish their practices in the community primarily served by it ("the Service Area"); and

WHEREAS, the Hospital has determined that there is a need for the services of certain medical specialties in the Service Area including Internal Medicine; and

WHEREAS, **PAUL B. ROEMER, MD** is licensed to practice medicine in the Commonwealth of Pennsylvania and has not previously practiced in the Service Area or been affiliated with another hospital in the Service Area; and

WHEREAS, Dr. Roemer desires to specialize in the practice of Internal Medicine in the Service Area; and

WHEREAS, the Hospital has determined that it is in the best interests of the people in said Service Area to provide an income guarantee and other financial incentives sufficient to induce the Dr. Roemer to relocate to the Service Area and permit Dr. Roemer to establish a full-time practice of Internal Medicine in the Service Area; and

WHEREAS, Dr. Roemer intends to practice as an employee of the Group; and

WHEREAS, the Hospital has also determined that if Dr. Roemer chooses to practice with the Group, as opposed to practicing on a solo basis, the Hospital will be better able to achieve its goal of promoting the health of the people in the Service Area by virtue of the cross-coverage and internal peer review that are inherent in group practice.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, and intending to be legally bound hereby, the parties hereto agree as follows:

**EXHIBIT**

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tabbies

## **Section 1. Definitions**

For purposes of this Agreement:

- (a) "Net Practice Income" shall mean all fees collected by the Group on a cash basis for all medical services rendered by Dr. Roemer in the course of his practice during the Guarantee Period, whether billed under the Dr. Roemer's name or not, less Office Expenses of forty percent (40%) of gross cash receipts.
- (b) "Starting Date" shall mean on or about November 1, 1999, provided that the following has occurred: (i) Dr. Roemer has been appointed to the Hospital's active medical staff; (ii) Dr. Roemer has submitted an application for provider numbers and the Group's office has been staffed, equipped and open to see patients; and (iii) at least one advertisement has been run in the local newspaper announcing that Dr. Roemer's office is open and he is accepting patients.
- (c) "Guarantee Period" shall mean the 12 month period commencing on the Starting Date and continuing for a period of 12 months until October 31, 2000.
- (d) "Repayment/Forgiveness Period" shall mean the period commencing on November 1, 2000 and continuing for a period of five years until October 31, 2005.
- (e) "Equipment" shall mean (i) standard equipment needed in the office such as files, typewriters, duplicating equipment, desks, chairs, etc., and (ii) medical equipment reasonably sufficient for the practice of Dr. Roemer's specialty.
- (f) The "Equipment", both medical and office, required for Dr. Roemer to practice medicine is already owned by the Group. It is anticipated that no new equipment will be needed.
- (g) "Office Expenses" shall be accepted as forty percent (40%) of gross cash receipts and shall cover all of the usual expenses of practicing medicine during the guarantee period except malpractice insurance and the cost of books, journals, and continuing medical education.
- (h) "Service Area" shall mean primary and secondary areas of patients serviced by the Hospital as determined in maps.

## **Section 2. Financial Guarantee**

The Hospital guarantees to the Group that the Group will, during each month of the one-year Guarantee Period, receive Net Practice Income for Dr. Roemer of Ten Thousand Four Hundred, Sixteen Dollars and Sixty-Seven Cents (\$10,416.67) [\$125,000.00 annually] (the "Guarantee"). For each calendar month, beginning with the month in which the Starting Date occurs, that Net Practice Income for such month is less than the Guarantee, the Hospital shall advance to the Group the difference between the Guarantee and the amount of Net Practice Income received by the Group for Dr. Roemer during that month. The Group and Dr. Roemer shall make all the financial information deemed necessary by the Hospital to make such calculation available to the Hospital as soon as possible after the end of each month.

during the Guarantee Period. The Hospital agrees to make any required advance within 15 days of receipt of such information.

### **Section 3. Signing Bonus**

In addition to the Guarantee, the Hospital shall directly award Dr. Roemer a sign-on bonus of Six Thousand and Two Hundred Dollars (\$6,200.00) due and payable immediately upon signing of this Agreement.

### **Section 4. Educational Loan Forgiveness**

The Hospital shall directly award Dr. Roemer with educational loan forgiveness in the amount of Ten Thousand Dollars (\$10,000.00) per year for ten (10) years. Payment will be awarded at the end of each one-year of service to the Clearfield area providing the Dr. Roemer produces receipt for same. Payment will be made within thirty (30) days after the end of each one-year period of practice within the Clearfield Service Area. Dr. Roemer shall not use these funds for any purpose other than to retire his educational loan obligations. If Dr. Roemer were to join with a competing healthcare facility or group during this ten-year period, then the Hospital has the right to repayment of all monies paid under this Section and all other features of this Agreement automatically terminate. If Dr. Roemer ceases to be an active member of Clearfield Hospital's Medical Staff for any reason, then all future payments are terminated.

### **Section 5. Financial Obligation of the Physician**

- (a) If, in any month during the Guarantee Period, Net Practice Income exceeds the Guarantee, the Hospital will make no payment to the Group.
- (b) During the Guarantee Period, the Group and Dr. Roemer will make a good faith effort to collect all accounts receivable, and hereby grants to the Hospital a security interest in said accounts receivable in an amount equal to the unrepaid balance of the amounts advanced to the Group under the Guarantee. Dr. Roemer shall execute such documents as the Hospital determines may be necessary to perfect that security interest.
- (c) The Group shall execute a Promissory Note at the end of the Guarantee Period evidencing the obligation to repay any amounts advanced under the Guarantee that have not been repaid as of the expiration or termination of the Guarantee Period. Provided, however, that for each month during the Repayment/Forgiveness Period that Dr. Roemer maintains a full-time practice in the Service Area and continues to fulfill the Community Service Obligations set forth in the Agreement, the Hospital shall forgive the amount owed to it in the next monthly installment due under the Promissory Note and each month release Dr. Roemer and the Group from any repayment obligation for that installment. If Dr. Roemer ceases to comply with any provision of this Agreement prior to the end of the Repayment/Forgiveness Period, the remaining payments still due and owing to the Hospital shall not be forgiven and shall be repaid in accordance with Section 5(d).

- (d) The terms of the Promissory Note shall include language as follows:  
For value received, and intending to be legally bound, the Group promises to pay to the order of the Hospital the principal sum equal to the total amount advanced to the Group by the Hospital but not repaid to the Hospital pursuant to the Agreement between the Group and the Hospital, the Starting Day of which is November 1, 2000, plus all interest due thereon, as said amount is reflected on the books of the Hospital. The Hospital shall give written notice to the Group of the amount so owed as of the date of expiration or termination of the Guarantee Period. Terms used in the Note shall have the same meanings as set forth in this Agreement. Principal and interest shall be paid in sixty (60) equal monthly installments beginning on the first day of the Repayment/Forgiveness Period and on the first day of each subsequent month thereafter, subject to forgiveness provisions contained in this Agreement. Interest shall begin to accrue on November 1, 2000. The rate of said interest shall be the prime interest rate plus one percentage point (1%) as reported in the last edition of the Wall Street Journal published and shall remain at said rate for the term of the Promissory Note. Said interest shall be due and payable along with the principal. A schedule of installment payments actually due shall be prepared by the Hospital and transmitted to the Group on or before the date that the first payment is due. After maturity, interest shall accrue at the interest rate specified above until all sums due hereunder are paid. So long as the Hospital is the holder hereof, the Hospital's book and records shall evidence at all times all amounts outstanding under the Note and the date and amount of each advance and payment made pursuant hereto. This prompt and faithful performance of all of the Group's obligations hereunder, including, without limitation, time of payment, shall be of the essence of the Promissory Note.
- (e) The Group hereby warrants that neither the Group nor Dr. Roemer has ever declared bankruptcy. Dr. Roemer and the Group shall not use this Agreement or the amounts due hereunder as collateral for any other debt, loan or obligation without the prior written consent of the Hospital. Creditors of Dr. Roemer and the Group shall not have recourse against the Hospital with respect to any debt, loan or obligation of Dr. Roemer or the Group.
- (f) The financial terms of this Agreement, including the amounts of any and all advances and reimbursements to the Group, shall be strictly confidential. The Group and Dr. Roemer shall not discuss the financial terms of this Agreement with or otherwise disclose or communicate its contents to any person or entity other than their attorneys, financial advisors or accountants without the express written consent of the Hospital, unless compelled by subpoena or other legal process.

#### Section 6. Relocation Expenses

Dr. Roemer shall be responsible for his own relocation expenses.

### **Section 7. Professional Liability Insurance**

During the guarantee period, the Hospital shall provide Dr. Roemer with professional liability insurance with tail coverage with basic limits in the amounts of \$900,000/\$300,000 with excess coverage in at least the limits available through the Pennsylvania Catastrophe Fund, but otherwise as required of all members of the Hospital's Medical Staff. The Group or Dr. Roemer shall be responsible for insurance after the guarantee period.

### **Section 8. Reporting of Payments**

The Hospital shall report to the Internal Revenue Service and to such state and local taxing authorities as may be applicable, any income realized by the Physician pursuant to this Agreement as required by law, pursuant to IRS Form 1099 or similar forms used for such purposes.

### **Section 9. No Requirement to Make Referrals**

- (a) There is no requirement that Dr. Roemer or the Group make referrals to, be in a position to make referrals to, or otherwise generate business for the Hospital as a condition of receiving the benefits hereunder.
- (b) The Group shall not restrict or prohibit from establishing staff privileges at, referring any service to, or otherwise generating any business for any entity besides the Hospital of Dr. Roemer's choosing.
- (c) The amount or value of the recruitment benefits provided by the Hospital hereunder shall not vary (or be adjusted or renegotiated) based on the volume or value of any expected referrals to, or business otherwise generated for, the Hospital or its affiliates.

### **Section 10. Community Service Obligations of the Physician**

In order to carry out the purpose of this Agreement, which is to make needed medical services more readily available to the people within the Service Area, the Group shall require Dr. Roemer to comply with the following Community Service Obligations:

- (a) Dr. Roemer shall:
  - (i) Meet and continue to meet the criteria for active medical staff appointment as set forth in the Hospital's Medical Staff Bylaws;
  - (ii) Apply for and maintain clinical privileges to practice Internal Medicine commensurate with the procedures that he shall be performing at the Hospital

- (iii) Comply with the Bylaws, Rules and Regulations, Policies and Procedures of the Hospital and its medical staff;
- (iv) Exercise that standard of skill, diligence, and regularity as generally applicable to the practice of Internal Medicine in the Service Area;
- (v) Obtain and/or maintain a license to practice medicine in Pennsylvania and current unrestricted narcotics registration from the DEA; and
- (vi) Obtain and/or maintain board certification in Internal Medicine.

In the event that Dr. Roemer fails to meet any of the above requirements, this Agreement shall automatically terminate.

- (b) The Group is an independent contractor and shall conduct its independent practice of Internal Medicine in the Service Area. However, in order to fulfill the community need for which Dr. Roemer was recruited to the Service Area, during the Term of this Agreement the Group shall require Dr. Roemer to provide patient services within the Service Area of the Hospital on a full-time (40 hour-per-week) basis. The Group will also limit Dr. Roemer's vacation and educational leave time to two weeks of vacation time annually and one week of continuing medical education time.
- (c) In order to assure adequate access to care by patients in the Hospital's Service Area, Dr. Roemer shall execute such agreements as may be necessary to become, and shall remain, a participating provider in the federal Medicare program, the Pennsylvania Medicaid program. Dr. Roemer shall also participate in the Hospital's call roster and shall treat any patients referred or assigned pursuant to the Hospital's Emergency Department or service on-call rosters, regardless of the insurance status of such patients or their ability to pay. In the event that Dr. Roemer's participation in Medicare or Medicaid terminates for any reason or he is otherwise excluded or precluded from participation in either of those programs, this Agreement shall automatically terminate.

#### **Section 11. Independent Contractor**

In the performance of all obligations hereunder, the Group and Dr. Roemer shall be deemed to be independent contractors and not employees of the Hospital and the Hospital shall not withhold, or in any way be responsible for, the payment of any federal, state or any local income or wage taxes, F.I.C.A. taxes, unemployment compensation, or workers' compensation contributions, vacation pay, sick leave, retirement benefits, or any other payments for or on their behalf. The Group shall indemnify and hold the Hospital harmless from any and all loss or liability arising with respect to such payments, withholdings, and benefits.

#### **Section 12. Billing for Professional Services**

- (a) Billing for professional services rendered by Dr. Roemer shall be the responsibility of the Group.

- (b) During the Guarantee Period and period of forgiveness thereafter, the Hospital reserves the right to retain its own accountant to verify the billings, receipts, revenues and expenses attributable to Dr. Roemer's practice and such other information necessary to effectuate the terms of this Agreement; and Dr. Roemer and the Group shall permit the Hospital and its designated accountant to have access to this information.

### **Section 13. Termination**

- (a) This Agreement shall expire at the end of the Term of this Agreement, provided, however, Dr. Roemer's obligations described in Section 5 of this Agreement shall not be affected by the termination or expiration of this Agreement.
- (b) The Hospital and the Group shall each have the right to terminate this Agreement by giving written notice to the other party of material breach of any term(s) of this Agreement (effective on the date stated in the notice which must be at least 45 days after its receipt by the party in material breach) if the party in material breach fails to cure the material breach(es) prior to the termination date stated in said notice.
- (c) In the event that (i) the Hospital terminates this Agreement due to material breach by the Group or Dr. Roemer, (ii) the Group or Dr. Roemer terminates this Agreement for a reason other than those specified in Section 10(a), 10(b), or 10(c) the Agreement automatically terminates, then the entire amount advanced pursuant to Section 2 of this Agreement, plus all applicable interest, less any repayments made by the Group, less any forgiveness prior to the effective date of said termination, shall be repaid to the Hospital by the Group in accordance with Section 5 (c) and (d).
- (d) In the event of Dr. Roemer's death, disability, or any other circumstance that prevents Dr. Roemer from practicing medicine full-time, the Agreement shall automatically terminate.
- (e) In the event:
- (i) of the termination of this Agreement pursuant to this Section;
  - (ii) of the termination of this Agreement due to the Hospital's material breach of this Agreement; or
  - (iii) the Group or Dr. Roemer cannot perform the covenants of this Agreement due to unforeseen circumstances beyond the Group's or Dr. Roemer's control, as judged solely by the Hospital,

The Group shall repay the entire amount advanced pursuant to Section 2 of this Agreement, plus all applicable interest, less any repayments made by the Group, less any forgiveness prior to the effective date of said termination pursuant to Section 5 (c).

- (f) This Agreement and all of its terms and conditions shall terminate automatically in the event the Group repays all of the advances made by the Hospital pursuant to Section 2 of this Agreement, plus any applicable interest.

#### **Section 14. Compliance with Law**

- (a) The parties shall comply with all applicable statutes, rules, regulations and standards of any and all governmental authorities and regulatory and accreditation bodies.
- (b) The forgiveness provisions and other benefits provided hereunder shall only be effective to the extent not prohibited by law and to the extent they do not adversely affect the Hospital's tax-exempt status
- (c) In the event the Hospital determines that this Agreement is illegal or inconsistent with the Hospital's tax-exempt status, the forgiveness provision shall have no force and effect and the full amount of the outstanding balance shall be repaid to the Hospital in accordance with Section 5 (c).

#### **Section 15. Jurisdiction**

This Agreement shall be construed and enforced under, and in accordance with, the laws of Pennsylvania.

#### **Section 16. Assignment**

This Agreement may not be assigned by either party, without the express written consent of the other.

#### **Section 17. Amendments**

This Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be operative or valid it shall have been reduced to writing and signed by both parties.

#### **Section 18. Medicare Access to Books and Records**

In the event, and only in the event, that Section 952 of P.L. 96-499 (42 U.S.C. Section 1395x(v)(1)(1)) is applicable to this Agreement, the Group agrees as follows:



- (a) Until the expiration of four years after the furnishing of such services pursuant to this Agreement, the Group shall make available, upon written request from the Secretary of the federal Department of Health and Human Services or upon request from the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, any of the Group's books, documents and records that are necessary to certify the nature and extent of the cost of services provided pursuant to this Agreement; and
- (b) If the Group carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary of the federal Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, any books, documents and records of such organization that are necessary to verify the nature and extent of the cost of services provided pursuant to said subcontract.

#### **Section 19. Medical Record Documentation**

Every practitioner on the Medical Staff of Clearfield Hospital is responsible for completion of all of his/her medical record documentation prior to leaving the Medical Staff with the exclusion of an emergency situation. Failure to do so is considered a direct violation of the Medical Staff Bylaws of Clearfield Hospital, which is reportable to the National Practitioners Data Bank.

#### **Section 20. Strict Performance**

No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and Term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

#### **Section 21. Entire Agreement**

There are no other agreements or understandings, either oral or written, between the parties affecting this Agreement, except as otherwise specifically provided for or referred to herein. This Agreement cancels and supersedes all previous agreements between the parties relating to the subject matter covered by this Agreement.

**Section 22. Invalidity or Unenforceability of Particular Provisions**

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**Section 23. Compliance Programs**

The Group and Dr. Roemer shall cooperate with any and all corporate compliance programs now or hereafter instituted by the Hospital.

**Section 24. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture, or any association between the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to become effective the day and year first written above.

**SIGNED**

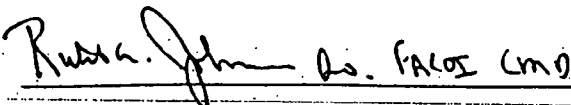
**CLEARFIELD HOSPITAL**

  
Kent C. Hess, President and CEO

Date: 26 OCT 99

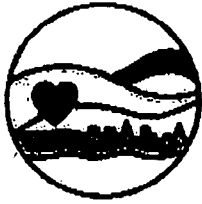
Witness: 

**CLEARFIELD PROFESSIONAL GROUP, LTD.**

  
Russel John DeFalco, CEO

Date: October 26, 1999

Witness: 



## Clearfield Hospital

---

September 19, 2003

Dr. Richard A. Johnson, D.O.  
Clearfield Professional Group, Ltd.  
820 Turnpike Avenue  
Clearfield, PA 16830

Re: Dr. Paul Roemer's Income Guarantee

Dear Dr. Johnson:

Clearfield Hospital entered into a Group Recruitment Agreement with the Clearfield Professional Group, Ltd. dated October 26, 1999. We provided assistance to your group, through an income guarantee, in the recruitment of Dr. Paul Roemer. The amount of the income guarantee to Dr. Roemer was \$48,918.08. As stated in Section 5(c), if Dr. Roemer ceases to comply with any provision of the Agreement prior to the end of the Repayment/Forgiveness Period, the remaining payments still due and owing to the Hospital shall not be forgiven and shall be repaid in accordance with Section 5(d). Since Dr. Roemer did not maintain his practice in the Clearfield area after the end of the Guarantee Period, the amount of the income guarantee is to be repaid to Clearfield Hospital. To date we have not received any payments on this outstanding balance.

The total amount of principal and interest outstanding as of October 1, 2003 is \$55,844.11. Please contact me to arrange repayment of this outstanding obligation.

Sincerely,

Richard D. Stockley  
Chief Financial Officer

CC: Kent C. Hess, President and CEO

809 TURNPIKE AVENUE • P.O. BOX 992 • CLEARFIELD, PA 16830  
(814) 765-5341 • [www.clearfieldhosp.org](http://www.clearfieldhosp.org)

EXHIBIT

4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

**ORDER**

AND NOW, TO WIT, this \_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of Clearfield Professional Group, Ltd.'s Petition for Permission to File Amendment to Complaint and Request for Rule to Show Cause, said Petition is GRANTED and it is hereby ORDERED that Clearfield Professional Group, Ltd. is given leave to file its Amendment to Complaint.

BY THE COURT:

\_\_\_\_\_. J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

**PRAECIPE FOR ENTRY OF  
APPEARANCE**

Defendant/Plaintiff.

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
Pa. ID # 33221  
Carl J. Rychcik  
Pa. ID # 73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**FILED**

**FEB 11 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

15

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

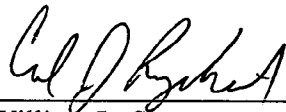
**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Kindly enter the appearance of William L. Stang, Esquire and Carl J. Rychcik, Esquire of Fox Rothschild LLP, 625 Liberty Avenue, 29<sup>th</sup> Floor, Pittsburgh, Pennsylvania 15222 on behalf of Clearfield Professional Group, Ltd., Defendant at 01-74-CD/Plaintiff at 01-87-CD, in the above-referenced matter.

FOX ROTHSCHILD LLP

By:



William L. Stang

Pa. ID # 33221

Carl J. Rychcik

Pa. ID # 73754

625 Liberty Avenue, 29th Floor

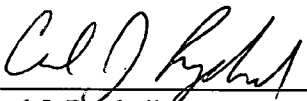
Pittsburgh, PA 15222

412-391-1334

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Praecipe for Entry of Appearance was served upon the following individual by first class U.S. Mail this 9th day of February 2004:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Carl J. Rychcik

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.

:

VS.

: NO. 01-74 & 01-87-CD

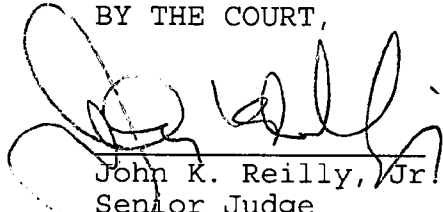
CLEARFIELD PROFESSIONAL GROUP

:

O R D E R

NOW, this 15th day of January, 2004, upon agreement of counsel, it is the ORDER of this Court that the above-captioned matter shall be removed from the current list for jury trials and scheduled by the Court Administrator for trial without jury at the convenience of the parties. Pretrial conference schedule for January 15, 2004, shall be and is hereby cancelled.

BY THE COURT,

  
John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

FILED

JAN 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

#14



Copies mailed to

Jason Mettley, Esq.

Wm. Stang, Esq.  
Carl Ryckick, Esq.

1/15/04  
CF

FILED

JAN 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.:

Plaintiff,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, INC.

Defendant.

CIVIL DIVISION

NO. 01-74-CD

NO. 01-87-CD

DEFENDANT'S MOTION FOR  
CONTINUANCE OF TRIAL TO SPRING  
TERM

Filed on behalf of  
Clearfield Professional Group, Ltd., Defendant

Counsel of Record for this Party:

Sue Gunn  
Pa. ID. #44755

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115

(412) 391-1334

FILED

JAN 02 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.:

Plaintiff,

CIVIL DIVISION

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, INC.

Defendant.

**DEFENDANT'S MOTION FOR CONTINUANCE OF TRIAL TO SPRING TERM**


Defendant, Clearfield Professional Group, Ltd. ("CPG"), by and through its undersigned counsel, moves for a continuance of trial to Spring Term, averring as follows:

1. By letter dated December 26, 2003, this Court notified counsel for the parties of a pre-trial conference scheduled for January 15, 2004.
2. The undersigned counsel for CPG will soon be leaving the Fox Rothschild law firm, requiring reasonable time for replacement counsel to become familiar with this case to prepare adequately for trial.
3. Counsel for Plaintiff, attorney Jason Mettley, conferred with his client, Plaintiff Paul Brian Roemer, M.D., and does not object to a trial continuance under these circumstances requiring substitute counsel. (A Stipulation of Counsel is attached hereto as Exhibit A.)
4. Neither party requested previously a trial continuance.
5. Neither party will be prejudiced by this Court's granting of a trial continuance.

WHEREFORE, Defendant Clearfield Professional Group, Ltd., respectfully requests this Court to grant its Motion for Continuance of Trial to Spring Term.

Respectfully submitted,

FOX ROTHSCHILD LLP

By:   
Sue Gunn  
Counsel for Defendant,  
Clearfield Professional Group, Ltd.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.:

CIVIL DIVISION

Plaintiff,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, INC.

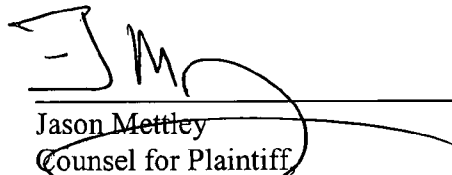
Defendant.

**STIPULATION OF COUNSEL**

1. I, Jason Mettley, counsel for Plaintiff Paul Brian Roemer, M.D., was contacted by attorney Sue Gunn, counsel for Defendant Clearfield Professional Group, Ltd., on December 29, 2003.

2. Attorney Gunn informed me that she is leaving the employ of the Fox Rothschild law firm, and that replacement counsel will require a reasonable amount of time to prepare for trial.

3. Given these circumstances, I do not object to Defendant's Motion for Continuance of Trial to Spring Term.

  
\_\_\_\_\_  
Jason Mettley  
Counsel for Plaintiff  
Paul Brian Roemer, M.D.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant's Motion for Continuance of Trial to Spring Term was served upon the following individual(s) by first class U.S. Mail this 30<sup>th</sup> day of December 2003:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
\_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.:

CIVIL DIVISION

Plaintiff,

NO. 01-74-CD

NO. 01-87-CD

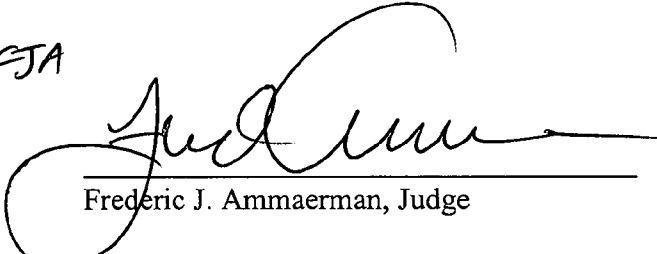
vs.

CLEARFIELD PROFESSIONAL  
GROUP, INC.

Defendant.

**ORDER**

Now, this 7 day of January 2004, it is hereby Ordered that Defendant's Motion  
for Continuance of Trial to Spring Term is ~~GRANTED~~ *denned. FJA* and that this case be placed on this  
~~Court's April 1, 2004, Spring Term trial list.~~ *FJA*

  
Frederic J. Ammaerman, Judge

**FILED**

**JAN 09 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

FILED *ice*  
*01/14/04*  
JAN 09 2004  
*Atty Gen*  
*WAS*



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

PAUL BRIAN ROEMER, M.D.

-vs-

CLEARFIELD PROFESSIONAL GROUP,  
LTD.

:  
:  
:  
:  
:  
:

No. 01 - 74 - CD  
No. 01 - 87 - CD

**FILED**

DEC 16 2003

William A. Shaw  
Prothonotary/Clerk of Courts

**OPINION AND ORDER**

The above-captioned actions were commenced separately by each party filing a complaint seeking money damages resulting from the dissolution of the association of Paul Brian Roemer, M.D. with Clearfield Professional Group, Ltd. Following consolidation of the actions, each party has filed Motions for Summary Judgment and following briefs and argument thereon, the Court determines the issues as follows.

First with regards to Motion for Summary Judgment in Part and in Whole filed on behalf of Paul Brian Roemer, M.D. seeking summary judgment in his favor on his claims against Clearfield Professional Group, Ltd. as follows. Count I claiming no material dispute that Clearfield Professional Group, Ltd. terminated the employment contract and Count II requesting compensation for services performed from October 1 through October 7 of the year 2000. And further, Roemer claims summary judgment with regards to the following counts in Clearfield Professional Group, Ltd.'s claim against him. Count I alleging no material dispute that Clearfield Professional Group, Ltd. terminated the employment contract; Count II that Roemer did not breach any duty of loyalty to Clearfield Professional Group, Ltd.; Count III that Roemer's conduct regarding the telephones did not amount to misappropriation; and Count IV that Roemer did not act outrageously or with malicious intent and that Clearfield Professional Group, Ltd.'s request for punitive damages must fail.

The Court agrees that Clearfield Professional Group Ltd. has no claim for punitive damages and does herein grant Summary Judgment in favor of Roemer and against Clearfield Professional Group, Ltd. on that issue. In all other respects the Court will dismiss his Motion for Summary Judgment.

With regards to Motion for Summary Judgment filed on behalf of Clearfield Professional Group, Ltd., this Court notes that Clearfield Professional Group, Ltd. seeks summary judgment on Count I of its Complaint alleging that its termination of Roemer's employment was consistent with the employment contract; Count II that there is no material dispute that Roemer breached common law duties owed to Clearfield Professional Group, Ltd.; Count III that Roemer misappropriated property belonging to Clearfield Professional Group, Ltd. and Count IV seeking punitive damages. This Court holds that Roemer is not entitled to punitive damages under the circumstances of this action and therefore will grant Summary Judgment in favor of Clearfield Professional Group, Ltd. on that issue. In all other respects Clearfield Professional Group, Ltd.'s Motion for Summary Judgment with regards to its Complaint against Roemer is dismissed.

Clearfield Professional Group, Ltd. seeks Summary Judgment on Roemer's claims as follows. Count I that there is no material dispute that Clearfield Professional Group, Ltd. terminated Roemer's employment in a lawful manner; Count II that there is no material dispute that Clearfield Professional Group, Ltd. compensated Roemer fully consistent with its obligations; Count III that there is no material dispute that Roemer's action constituted tortious interference; Count IV that there is no material dispute that Clearfield Professional Group, Ltd. has not converted wrongfully any personal property of Roemer; and Count V that Roemer is not entitled to punitive damages. Consistent with it ruling above, the Court will grant

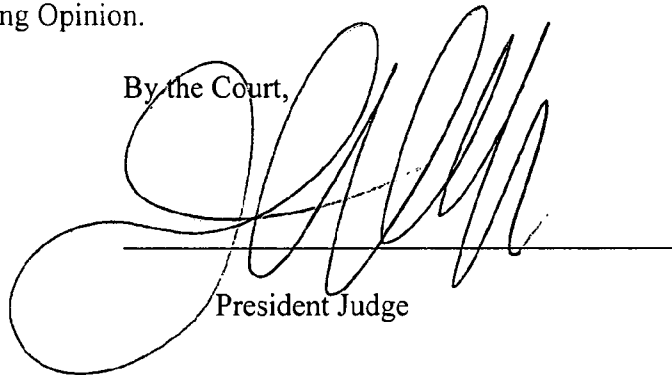
Clearfield Professional Group, Ltd.'s Motion for Summary Judgment with regards to Roemer's claim for punitive damages and in all other regards dismiss said Motion.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 16<sup>th</sup> day of December, 2003, following argument and briefs into Motions for Summary Judgment filed on behalf of each of the parties above-named, it is the ORDER of this Court that said Motions shall be and are hereby granted in part and dismissed in part in accordance with the foregoing Opinion.

By the Court,

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the President Judge.

President Judge

FILED

01 11:05 AM

DEC 16 2003

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Attys: Kabala

Gunn

Metkey

Stang

ED  
KAY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

Plaintiff,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

CIVIL DIVISION

No. 01-74-CD

DEFENDANT'S CROSS MOTION FOR  
SUMMARY JUDGMENT

Filed on behalf of Clearfield  
Professional Group, Ltd., Defendant

Counsel of Record for this Party:

Sue Gunn  
Pa. ID #44755

FOX ROTHSCHILD LLP  
Firm No. 172  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115

(412) 391-1334

**FILED**

SEP 26 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff,

No. 01-74-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

**DEFENDANT'S CROSS MOTION  
FOR SUMMARY JUDGMENT**

Defendant, Clearfield Professional Group, Ltd. ("CPG"), by and through its attorneys Fox Rothschild LLP, respectfully moves this Court pursuant to Pennsylvania Rules of Civil Procedure 1035 and 1501 to grant Summary Judgment in its favor on its claims against Plaintiff, Paul D. Roemer, M.D. ("Roemer"), and to dismiss a Summary Judgment Roemer's claims against it. In support of its motion, Clearfield avers as follows:

1. Clearfield adopts by reference the summary of the statement of this litigation as set forth in Paragraphs 1 through 7 of Roemer's Motion for Summary Judgment.
2. Clearfield is entitled to Summary Judgment on its claims against Roemer as follows:

A. Count One

There is no material dispute that CPG's termination of Roemer's employment was lawful and consistent with the terms and conditions of his Employment Contract and therefore CPG is entitled to judgment as a matter of law.

B. Count Two

There is no material dispute that Roemer breached common law duties owed to CPG during his employment and is therefore entitled to judgment as a matter of law.

C. Count Three

There is no material dispute that Roemer misappropriated property belonging to CPG and is entitled to judgment as a matter of law.

D. Count Four

There is no dispute that CPG was harmed by Roemer's wrongful conduct and that Roemer acted outrageously and/or with malicious attempt. Therefore CPG is entitled to punitive damages as a matter of law.

3. CPG is entitled to Summary Judgment on claims asserted against it by Roemer as follows:

A. Count One

There is no material dispute that CPG terminated its employment relationship with Roemer in a lawful manner and consistent with the terms and conditions of his Employment Agreement and therefore is entitled to the requested relief in equity as a matter of law.

B. Count Two

There is no material dispute that CPG compensated Roemer fully for all services performed for CPG and is therefore entitled to requested relief as a matter of law.

C. Count Three

There is no material dispute that Roemer's action constituted tortuous interference and is therefore entitled to judgment as a matter of law.

D. Count Four

There is no material dispute that CPG has not converted wrongfully any personal property of Roemer and is therefore entitled to judgment as a matter of law.

E. Count Five

Roemer cannot demonstrate that CPG is liable for any damages, and Roemer cannot proffer evidence of CPG acting in an outrageous and/or malicious manner. Such lack of evidence serves as the basis as a matter of law to dismiss Roemer's claim for punitive damages.

4. Support for Defendant's Cross Motion for Summary Judgment shall be set forth in full in a Memorandum of Law to be filed consistent with a briefing schedule to be issued by this Court.

For all of the above reasons, Clearfield Professional Group, Ltd. respectfully requests this Court to grant Summary Judgment in its favor on its claims against Defendant Roemer and against Defendant Paul B. Roemer, M.D. on his claims against CPG.

Respectfully submitted:

FOX ROTHSCHILD LLP

By Sue Gunn  
Sue Gunn



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Defendant's  
Cross Motion for Summary Judgment was served upon the following individual(s) by first class  
U.S. Mail, postage prepaid, this 25<sup>th</sup> day of September 2003:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Eric Gunn

**FILED**

*pm 11:31, AA 100 to 1000*

SEP 26 2003

William A. Shaw  
Prothonotary



ATTORNEYS AT LAW

525 LIBERTY AVENUE • 29TH FLOOR • PITTSBURGH, PA 15222-3115  
412.391.1334 • FAX 412.391.6984 • [www.foxrothschild.com](http://www.foxrothschild.com)

Sue Gunn  
Phone: (412) 391-1334  
Internet Address: [sgunn@foxrothschild.com](mailto:sgunn@foxrothschild.com)

October 14, 2003

Marcy Kelley  
Deputy Court Administration  
Clearfield County Court of Common Pleas  
Second and Market Streets  
Clearfield PA 16830

Re: Roemer V. Clearfield Professional Group  
Docket No. 01-74-CD  
Our File Number: 60578-00001

Dear Ms. Kelley:

Please be advised that the parties have agreed to extend the deadline for the filing of Defendants' Summary Judgment supporting and opposing briefs until Thursday, October 23, 2003.

Please call me if you have questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Sue Gunn".

Sue Gunn

SG:eej

cc: Jason Mettley, Esq.

*formerly Kabala & Geeseman*

**FOX • ROTHSCHILD<sup>LLP</sup>**  
ATTORNEYS AT LAW

625 LIBERTY AVENUE • 29TH FLOOR • PITTSBURGH, PA 15222-3115  
412.391.1334 • FAX 412.391.6984 • [www.foxrothschild.com](http://www.foxrothschild.com)

Sue Gunn  
Phone: (412) 391-1334  
Internet Address: [sgunn@foxrothschild.com](mailto:sgunn@foxrothschild.com)

October 23, 2003

**VIA FACSIMILE (814-765-7649)**

Marcy Kelley  
Deputy Court Administration  
Clearfield County Court of Common Pleas  
Second and Market Streets  
Clearfield PA 16830

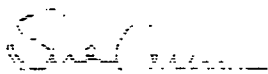
Re: Roemer v. Clearfield Professional Group  
Docket No. 01-74-CD  
Our File Number: 60578-00001

Dear Ms. Kelley:

Please be advised that the parties have agreed to extend the deadline for the filing of Defendants' Summary Judgment supporting and opposing briefs until Tuesday, October 28, 2003.

Please call me if you have any questions or comments.

Sincerely,



Sue Gunn

SG:eej

cc: Jason Mettley, Esq.

*formerly Kabala & Geeseman*

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D., ) CIVIL DIVISION  
 )  
Plaintiff ) No. 01-74-CD  
 )  
vs. )  
 )  
CLEARFIELD PROFESSIONAL ) Code:  
GROUP, LTD. )  
 )  
Defendant ) JURY TRIAL DEMANDED

- AND -

CLEARFIELD PROFESSIONAL ) CIVIL DIVISION  
GROUP, LTD. )  
Plaintiff ) No. 01-87-CD  
 )  
vs. )  
 )  
 )  
 ) Code:  
PAUL B. ROEMER, M.D. )  
 )  
Defendant ) JURY TRIAL DEMANDED

**MOTION FOR SUMMARY JUDGMENT IN  
PART AND IN WHOLE OF PAUL B.  
ROEMER, M.D.**

Counsel for Paul B. Roemer, M.D.

Attorney of Record:

Jason Mettley, Esquire  
Pa. I.D. #81966

Jubelirer, Pass & Intrieri, P.C.  
Firm #141  
219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

**FILED**

**AUG 01 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

#9

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,	) CIVIL DIVISION
	)
Plaintiff	) No. 01-74-CD
	)
vs.	)
	)
CLEARFIELD PROFESSIONAL	) Code:
GROUP, LTD.	)
	)
Defendant	) JURY TRIAL DEMANDED

- AND -

CLEARFIELD PROFESSIONAL	) CIVIL DIVISION
GROUP, LTD.	)
Plaintiff	) No. 01-87-CD
	)
vs.	)
	)
	)
	) Code:
PAUL B. ROEMER, M.D.	)
	)
Defendant	) JURY TRIAL DEMANDED

**MOTION FOR SUMMARY JUDGMENT IN PART AND IN WHOLE**  
**OF PAUL B. ROEMER, M.D.**

AND NOW COMES Paul B. Roemer, M.D., by and through his attorneys, Jubelirer, Pass & Intrieri, P.C. and Jason Mettley, Esquire, and respectfully moves this Honorable Court pursuant to Pennsylvania Rule of Civil Procedure 1035.2 and 1501 to grant summary judgment in part on his claims in civil action number 01-74-CD, and to grant summary judgment in whole on all claims against him in civil action number 01-87-CD.

The grounds for this motion are as follows:

1. Paul B. Roemer, M.D. (hereinafter referred to as “Dr. Roemer”) initiated Civil Action No. 01-74-CD against the Clearfield Professional Group, Ltd. (hereinafter the “CPG”) on January 16, 2001.

2. In his lawsuit, Dr. Roemer asserts five (5) legal and equitable claims against the CPG:

a. *Count I.* An action for declaratory relief, requesting the Court declare that: (i) the CPG wrongfully repudiated the parties’ employment contract on October 7, 2000; (ii) the employment contract be rescinded in totality as of that date; and, (iii) the CPG has no right to enforce any post-employment duties or obligations imposed against Dr. Roemer under the employment contract after October 7, 2000.

b. *Count II.* An action on *quantum meruit*, requesting a judgment in his favor in the amount of \$2,322 plus legal interest, representing the reasonable value of services Dr. Roemer actually performed on behalf of the CPG in October 2000.

c. *Count III.* An action for tortious interference with prospective contractual relations.

d. *Count IV.* An action for conversion.

e. *Count V.* An action for punitive damages.

3. On January 17, 2001, a day after Dr. Roemer filed his lawsuit, the CPG initiated Civil Action No. 01-87-CD against Dr. Roemer.

4. The CPG’s lawsuit asserts four legal claims against Dr. Roemer:

a. *Count I.* An action for breach of contract, alleging Dr. Roemer breached the parties’ employment contract and requesting judgment in an amount in excess of \$20,000.

b. *Count II.* An action for breach of duty of loyalty, alleging Dr. Roemer breached common law duties he owed the CPG during the employment relationship, and requesting judgment in an amount in excess of \$20,000.

c. *Count III.* An action for misappropriation, alleging Dr. Roemer misappropriated property belonging to the CPG and requesting judgment in an amount in excess of \$20,000.

d. *Count IV.* An action for punitive damages.

5. The claims in both lawsuits pertain to the termination of an employment contract between the parties and the events shortly following the termination of that employment contract.

6. The relevant pleadings in both actions are closed and the parties have completed discovery.

7. The filing of the instant motion will not unreasonably delay trial because no trial date has been set.

8. Dr. Roemer is entitled to summary judgment in part on the claims in his lawsuit as follows:

a. *Count I.* There is no material dispute that the CPG terminated the employment contract with Dr. Roemer without notice on October 7, 2000; therefore, Dr. Roemer is entitled to the requested relief as a matter of equity.

b. *Count II.* There is no material dispute that Dr. Roemer was employed by the CPG until October 7, 2000 and that the CPG failed to give any compensation to Dr. Roemer for services he actually performed from October 1, 2000 to October 7, 2000; therefore, Dr. Roemer is entitled to the requested relief as a matter of law.



9. Dr. Roemer is entitled to summary judgment in whole on the claims asserted in the CPG's lawsuit as follows:

a. *Count I.* There is no material dispute that the CPG terminated the employment contract with Dr. Roemer without notice on October 7, 2000; therefore, the CPG cannot prevail on its claims as a matter of law.

b. *Count II.* Dr. Roemer's conduct while employed by the CPG, to which there is no material dispute, does not amount to a breach of any duty of loyalty he owed the CPG, as a matter of law.

c. *Count III.* Dr. Roemer's conduct regarding the telephone numbers, to which there is no material dispute, does not amount to actionable misappropriation as a matter of law.

d. *Count IV.* The CPG has failed to demonstrate that Dr. Roemer is liable for any actual damages; moreover, the record does not substantiate a finding that Dr. Roemer acted outrageously or with malicious intent. Accordingly, the CPG's request for punitive damages must fail as a matter of law.

10. Further support for the instant Motion shall be set forth in full in a Memorandum of Law to be filed subsequently consistent with the briefing schedule to be issued by the Court.

For these reasons, Paul B. Roemer, M.D. respectfully requests this Honorable Court to grant him summary judgment in part on his claims in Civil Action number 01-74-CD, and to grant summary judgment in whole on all claims asserted against him by the Clearfield Professional Group, Ltd. in Civil Action number 01-87-CD.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire


Attorney for Paul B. Roemer, M.D.

DATE: 7-30-03

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within Motion for Summary Judgment in Part and in Whole was served upon counsel for all parties this 30th day of July, 2003, by First Class U.S. Mail, postage prepaid, addressed as follows:

Susan Gunn, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

  
Jason Mettley, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

Plaintiff,

vs.

CLEARFIELD PROFESSIONAL

Defendant.

CIVIL DIVISION

No. 01-74-CD

**PRAECIPE FOR A TRIAL DATE**

Filed on behalf of Clearfield Professional  
Group, Ltd., Defendant

Counsel of Record for this Party:

Sue Gunn, Esq.  
Pa. I.D. #44755

FOX ROTHSCHILD LLP  
Firm No. 172  
Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222

(412) 391-1334

PT1 101926v1 07/29/03

**FILED**

JUL 31 2003

m/1:06/ copy GA

William A. Shaw

Prothonotary Copy atty Gunn

~~ESQ~~

8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D., ) CIVIL DIVISION  
 )  
Plaintiff ) No. 01-74-CD  
 )  
vs. )  
 )  
CLEARFIELD PROFESSIONAL ) Code:  
GROUP, LTD. )  
 )  
Defendant ) JURY TRIAL DEMANDED

- AND -

CLEARFIELD PROFESSIONAL ) CIVIL DIVISION  
GROUP, LTD. )  
Plaintiff ) No. 01-87-CD  
 )  
vs. )  
 )  
 )  
Code:  
PAUL B. ROEMER, M.D. )  
 )  
Defendant ) JURY TRIAL DEMANDED

Stipulated Motion to Consolidate

**FILED**

OCT 1 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	No. 01-74-CD
	)	
CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Defendant	)	JURY TRIAL DEMANDED

- AND -

CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Plaintiff	)	No. 01-87-CD
	)	
vs.	)	
	)	
	)	Code:
PAUL B. ROEMER, M.D.	)	
	)	
Defendant	)	JURY TRIAL DEMANDED

**STIPULATED MOTION TO CONSOLIDATE**

AND NOW COME the parties in the above-captioned matters, Paul Brian Roemer, M.D., by and through his attorneys, Jason Mettley, Esquire, and Jubelirer, Pass & Intrieri, P.C., and the Clearfield Professional Group, by and through its attorneys, Susan Brahm Gunn, Esquire, and Kabala & Geeseman, P.C. and, pursuant to Pa.R.Civ.P. 213(a), hereby file this Stipulated Motion to Consolidate, and in support thereof, aver:

1. On January 16, 2001, Paul Brian Roemer, M.D., ("Dr. Roemer") filed a Complaint against the Clearfield Professional Group, Ltd., ("CPG") which the Prothonotary subsequently designated as docket number 01-74-CD.

7. Furthermore, Dr. Roemer and the CPG request this Honorable Court order these cases be heard together, at the same time, at a joint hearing or trial, and that Dr. Roemer, having filed the first action, be permitted to present evidence first. *See: Schieber v. Schieber*, 11 D&C 314 (Montgomery County, 1956).

WHEREFORE, the parties, Paul Brian Roemer, M.D. and the Clearfield Professional Group, Ltd., hereby request that this Honorable Court grant the instant Stipulated Motion to Consolidate, and enter the attached Order.

RESPECTFULLY SUBMITTED,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire

Pa. I.D. # 81966

Attorneys for Paul Brian Roemer, M.D.

KABALA & GEESEMAN, P.C.

BY: 

Susan Brahm Gunn, Esquire

Pa. I.D. # 44755

Attorneys for the Clearfield Professional Group

**FILED**

OCT 19 2001

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D., )

)  
)  
Plaintiff/Defendant )

)  
)  
vs. )

Nos. 01-74-CD

)  
)  
01-87-CD

CLEARFIELD PROFESSIONAL )  
GROUP, LTD. )

)  
)  
Defendant/Plaintiff )

JURY TRIAL DEMANDED

**ORDER**

AND NOW, this 15<sup>th</sup> day of October, 2001, the parties having filed a Stipulated Motion Consolidate, and the Court having given the matter due consideration, **IT IS ORDERED**, that the motion be, and the same hereby is, **GRANTED**, and that any documents filed by either of the parties shall bear the caption above, and that these cases shall be heard together, at the same time, at a joint hearing or trial, and that Dr. Roemer, having filed the first action, shall be permitted to present evidence first.

cc: Jason Mettley, Esquire  
JUBELIRER, PASS & INTRIERI, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222-15765

Susan Brahm Gunn, Esquire  
KABALA & GEESEMAN, P.C.  
Dominion Tower, 29<sup>th</sup> Floor  
625 Liberty Avenue  
Pittsburgh, Pa 15222

**FILED**

OCT 15 2001

019:43/2 cc atty Gunn  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

Plaintiff

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant

) CIVIL DIVISION

)

) No. 01-74-CD

)

) REPLY TO NEW MATTER

)

) Code:

)

) Filed on behalf of Plaintiff

)

Counsel of Record:

Jason Mettley, Esquire

Pa. I.D. #81966

Jubelirer, Pass & Intrieri, P.C.

Firm #141

219 Fort Pitt Boulevard

Pittsburgh, Pennsylvania 15222

(412) 281-3850

JURY TRIAL DEMANDED

**FILED**

JUL 19 2001

William A. Shaw  
Prothonotary

#6

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	No. 01-74-CD
	)	
CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Defendant	)	JURY TRIAL DEMANDED

**REPLY TO NEW MATTER**

AND NOW COMES the plaintiff, Paul Brian Roemer, M.D., by and through his attorneys, Jason Mettley, Esquire, and Jubelirer, Pass & Intrieri, P.C., and files the following Reply to New Matter, and avers in support thereof:

67. The averment in Paragraph 67 is a statement of incorporation to which no response is required.

68. The averments in Paragraph 68 are conclusions of law to which no response is required.

69. The averments in Paragraph 69 are conclusions of law to which no response is required.

70. The averment in Paragraph 70 is a statement of incorporation to which no response is required. By way of further response, plaintiff incorporates all averments of fact set forth in his Answer and New Matter in a companion case in the Court of Common Please of Clearfield County that is captioned Clearfield Professional Group, Ltd. v. Paul B. Roemer, M.D.,

No. 01-87-CD, a true and correct copy of which is attached hereto and incorporated herein as Exhibit "A".

71. The averments in Paragraph 71 are conclusions of law to which no response is required.

JURY TRIAL DEMANDED.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Plaintiff

vs.

PAUL B. ROEMER, M.D.,

Defendant

) CIVIL DIVISION

)

) No. 01.87.CD

)

) ANSWER AND NEW MATTER OF PAUL

) B. ROEMER, M.D.

)

) Filed on behalf of Defendant

)

Counsel of Record:

Jason Mettley, Esquire  
Pa. I.D. #81966

Jubelirer, Pass & Intrieri, P.C.  
Firm #141  
219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222

(412) 281-3850

JURY TRIAL DEMANDED

EXHIBIT

tabbles

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Plaintiff	)	
	)	
vs.	)	No. 01.87.CD
	)	
PAUL B. ROEMER, M.D.,	)	
	)	
Defendant	)	

NOTICE TO PLEAD

TO: Clearfield Professional Group, Ltd.  
820 Turnpike Avenue  
Clearfield, Pennsylvania 16830

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire  
Pa. I.D. #81966

219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

Attorney for Defendant,  
Paul B. Roemer, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Plaintiff	)	
	)	
vs.	)	No. 01.87.CD
	)	
PAUL B. ROEMER, M.D.,	)	
	)	
Defendant	)	

ANSWER AND NEW MATTER OF  
PAUL B. ROEMER, M.D.

AND NOW COMES the defendant, Paul B. Roemer, M.D., by and through his attorneys, Jason Mettley, Esquire, and Jubelirer, Pass & Intrieri, P.C., for answer to the civil action herein, and says:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part and denied in part. It is admitted that plaintiff and defendant, Paul B. Roemer, M.D. ("Dr. Roemer") executed a written employment contract (the "Contract"), attached to plaintiff's Complaint as Exhibit 1. It is further admitted that the Contract was executed on or about October 26, 1999, with an effective date of November 1, 1999. The

remaining allegations in Paragraph 5 refer to the terms of the Contract, a written document which speaks for itself. These allegations are thus denied and strict proof is demanded.

6. Denied. The allegations in Paragraph 6 refer to the terms of the Contract, a written document which speaks for itself. These allegations are thus denied and strict proof is demanded.

7. Admitted in part and denied in part. It is admitted that Dr. Roemer drafted, signed and submitted to plaintiff the July 13, 2000 letter attached to plaintiff's Complaint as Exhibit 2. The remaining allegations of Paragraph 7 refer to the content of the letter, a written document which speaks for itself. These allegations are thus denied and strict proof is demanded.

8. Admitted.

9. Denied. Dr. Roemer denies having sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 9, except it is denied that Dr. Roemer ever collected or moved any files belonging to plaintiff to his office with Clearfield Adult Medicine Associates, Inc. at 500 Turnpike Avenue, in Clearfield, Pennsylvania. Strict proof is demanded.

10. Admitted in part and denied in part. Dr. Roemer admits that on and prior to October 7, 2000, he gathered a number of patient files belonging to plaintiff. Dr. Roemer further admits that in May and again in July 2000, he learned that several of plaintiff's billing procedures were improper and/or unlawful, and that the main purpose he gathered plaintiff's files of his patients was to conduct an audit to ensure that the services he previously rendered these patients had been properly billed by plaintiff. Dr. Roemer denies ever removing any of the patient files from plaintiff's office, other than when he needed to perform his duties as a physician-employee of plaintiff.



11. Denied. To the contrary, Dr. Roemer denies ever assembling or collecting any of plaintiff's trade secrets for the purpose of engaging in improper competition with plaintiff. By way of further answer, Dr. Roemer made it a point to review files maintained by plaintiff of his patients to ensure that proper billing practices had been employed, but did so entirely at plaintiff's office.

12. Admitted in part and denied in part. Dr. Roemer admits that he spoke with Dr. Johnson on October 7, 2000. Dr. Roemer denies the remaining allegations in Paragraph 12; to the contrary, Dr. Johnson angrily confronted Dr. Roemer on October 7, 2000, in front of several police officers, and told Dr. Roemer that he was fired, demanded Dr. Roemer's keys to plaintiff's offices, and ordered Dr. Roemer to leave the premises. By way of further answer, Dr. Johnson terminated Dr. Roemer's employment with actual or apparent authority of plaintiff, and in material breach of the Contract.

13. Admitted in part and denied in part. Dr. Roemer admits opening his own medical practice in Clearfield, Pennsylvania, subsequent to his termination on October 7, 2000. Dr. Roemer admits that he had the alleged telephone numbers disconnected after being told by a Verizon employee that the telephone numbers were in his name and that he was the only one authorized to disconnect them. Dr. Roemer further admits that plaintiff paid for the alleged telephone numbers because they were obligated to do so under the Contract. The allegation that plaintiff "owned" the telephone numbers is a conclusion of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. Strict proof is demanded.

14. Admitted in part and denied in part. Dr. Roemer admits that he requested that Verizon disconnect the telephone numbers, and that plaintiff paid for those numbers in accordance with the Contract. The allegation that plaintiff "owned" the alleged telephone

numbers is a conclusion of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. Strict proof is demanded.

15. Admitted in part and denied in part. It is admitted that one of the telephone numbers that was disconnected was 814-765-2883. Dr. Roemer is without sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 15.

16. Admitted in part and denied in part. Dr. Roemer admits that plaintiff paid for the telephone numbers in accordance with the Contract. Dr. Roemer further admits that plaintiff has asked him to "acknowledge to Verizon that the telephone numbers belong to" plaintiff, and that he has not done so. The allegation that plaintiff "owned" the telephone numbers is a conclusion of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. Strict proof is demanded.

17. Denied. The allegations in Paragraph 17 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent that Paragraph 17 contains factual allegations, Dr. Roemer denies having sufficient knowledge or information to form a belief as to these allegations. Said allegations are thus denied and strict proof is demanded.

18. Denied. The allegations in Paragraph 18 are either conclusions of law to which no response is required, or references to the terms of the Contract, a written document which speaks for itself. The allegations are thus denied and strict proof is demanded.

19. Admitted. By way of further answer, Dr. Roemer had patient appointments scheduled on October 7, 2000, and did not cancel them because plaintiff suddenly terminated his employment.

20. Admitted in part and denied in part. It is admitted that plaintiff has demanded that Dr. Roemer pay it \$24,000.00, among other things. The remaining allegations in Paragraph 20 are denied because they are either conclusions of law to which no response is required, or references to the terms of the Contract, a written document which speaks for itself. By way of further answer, Dr. Roemer has no legal obligation to perform any of the post employment obligations provided in the Contract because plaintiff committed a material breach by terminating his employment prior to the expiration of the mandatory twelve-month term, and without the requisite written notice.

21. Denied. The allegations in Paragraph 21 refer to the Contract, a written document which speaks for itself. The allegations are denied and strict proof is demanded. By way of further answer, Dr. Roemer has no legal obligation to perform any of the post employment obligations provided in the Contract because plaintiff committed a material breach by terminating his employment prior to the expiration of the mandatory twelve-month term, and without the requisite written notice.

22. Admitted. By way of further answer, Dr. Roemer requested patient records from plaintiff when asked to do so by a patient, and the broad majority of requests were accompanied by an appropriate Release signed by the patient.

23. Admitted in part and denied in part. It is admitted that Dr. Roemer has requested plaintiff to copy certain patient files. Dr. Roemer denies having sufficient knowledge or information to form a belief as to the remaining allegations in Paragraph 23, and said allegations are denied. Strict proof is demanded.

24. Admitted in part and denied in part. It is admitted that plaintiff has demanded that Dr. Roemer pay costs for copying records of patients who have left plaintiff's practice to

continue under the care of Dr. Roemer. It is further admitted that Dr. Roemer has not paid these costs. The remaining allegations in Paragraph 24 are either conclusions of law to which no response is required, or, references to the terms of the Contract, a written document that speaks for itself. By way of further answer, Dr. Roemer has no legal obligation to perform any of the post employment obligations provided in the Contract because plaintiff committed a material breach by terminating his employment prior to the expiration of the mandatory twelve-month term, and without the requisite written notice.

## COUNT I

### BREACH OF CONTRACT

25. Denied. The allegations in Paragraph 25 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 25 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

26. Denied. The allegations in Paragraph 26 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 26 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

27. Denied. The allegations in Paragraph 27 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 27 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

WHEREFORE, defendant, Paul B. Roemer, M.D., hereby demands judgment in his favor and against plaintiff with costs and attorney's fees to be awarded to defendant.

## COUNT II

### BREACH OF DUTY OF LOYALTY

28. The allegation in Paragraph 28 is a statement of incorporation to which no response is required.

29. The allegations contained in Paragraph 29 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 29 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

30. The allegations contained in Paragraph 30 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 30 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

31. The allegations contained in Paragraph 31 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 31 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

32. Denied. To the contrary, Dr. Roemer has not obtained or used any of plaintiff's trade secrets to improperly compete with plaintiff.

33. The allegations in Paragraph 33 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied.

34. Denied. To the contrary, Dr. Roemer did not ask any of plaintiff's employees to terminate their employment with plaintiff to work for him.

35. Denied. To the contrary, these employees terminated their employment with plaintiff because of dissatisfaction with their employment at plaintiff's practice.

36. The allegations in Paragraph 36 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 36 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

37. The allegations contained in Paragraph 37 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 37 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

WHEREFORE, defendant, Paul B. Roemer, M.D., hereby demands judgment in his favor and against plaintiff with costs and attorney's fees to be awarded to defendant.

### COUNT III

#### MISAPPROPRIATION

38. The allegation in Paragraph 38 is a statement of incorporation to which no response is required.

39. Admitted in part and denied in part. It is admitted that plaintiff paid the telephone bills associated with the telephone numbers. By way of further answer, plaintiff paid those bills pursuant to the Contract. The allegation that plaintiff "owned" the telephone numbers is a

conclusion of law to which no response is required, and for purposes of pleadings, said allegation is denied.

40. Admitted in part and denied in part. Dr. Roemer knew that plaintiff paid the telephone bills associated with these telephone numbers. By way of further answer, plaintiff paid these bills pursuant to the Contract. The allegation that plaintiff "owned" the "rights" to these telephone numbers is a conclusion of law to which no response is required, and for purposes of pleading, said allegation is denied.

41. The allegations contained in Paragraph 41 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 41 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

42. Admitted.

43. The allegations contained in Paragraph 43 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 43 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded. By way of further answer, these telephone numbers are not trade secrets that can be misappropriated.

44. The allegations contained in Paragraph 44 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied.. To the extent Paragraph 44 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded. By way of further answer, these telephone numbers are not trade secrets that can be misappropriated.

45. The allegations contained in Paragraph 45 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 45 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

WHEREFORE, defendant, Paul B. Roemer, M.D., hereby demands judgment in his favor and against plaintiff with costs and attorney's fees to be awarded to defendant.

#### COUNT IV

##### PUNITIVE DAMAGES

46. The allegation in Paragraph 46 is a statement of incorporation to which no response is required.

47. The allegations in Paragraph 47 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 47 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

48. The allegations contained in Paragraph 48 are conclusions of law to which no response is required and, therefore, for purposes of pleading, said allegations are denied. To the extent Paragraph 48 contains factual allegations, Dr. Roemer denies each and every allegation, and strict proof is demanded.

WHEREFORE, defendant, Paul B. Roemer, M.D., hereby demands judgment in his favor and against plaintiff with costs and attorney's fees to be awarded to defendant.



NEW MATTER

IN FURTHER ANSWER to plaintiff's Complaint, Dr. Roemer avers the following new matter:

49. Paragraphs 1 through 48 above are incorporated herein by reference as though set forth in full.

50. Dr. Roemer avers that plaintiff has failed to state any claims upon which relief can be granted.

51. Dr. Roemer avers that the Contract was rescinded on October 7, 2000, because plaintiff committed a material breach of the Contract by terminating him without notice, in bad faith, and prior to the expiration of the twelve-month term of employment.

52. Dr. Roemer avers that plaintiff is estopped from asserting the validity of any post-employment obligation created by the Contract because plaintiff committed a material breach of the Contract by terminating him without notice, in bad faith, and prior to the expiration of the twelve-month term of employment.

53. Dr. Roemer avers that his refusal to perform any of the post-employment obligations created by the Contract is justified because plaintiff committed a material breach of the Contract by terminating him without notice, in bad faith, and prior to the expiration of the twelve-month term of employment.

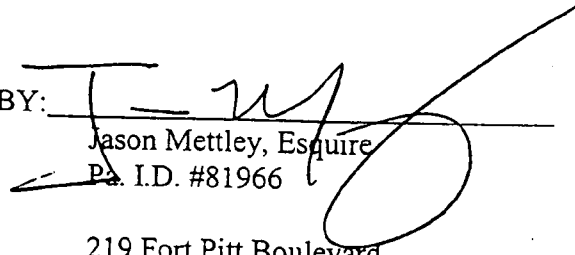
54. Dr. Roemer, although specifically denying any allegation that he misappropriated any of plaintiff's trade secrets or breached any duty of loyalty owed plaintiff, avers that any contact or effort to contact any patients was justified because he had a legal duty to notify patients of his new address upon leaving plaintiff's practice.

WHEREFORE, defendant, Paul B. Roemer, M.D., hereby demands judgment in his favor and against plaintiff, with costs and attorney's fees to be awarded to defendant.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY:

  
Jason Mettley, Esquire

Pa. I.D. #81966


219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850

Attorney for Defendant,  
Paul B. Roemer, M.D.

VERIFICATION

I, Paul Brian Roemer, M.D., state that I am the Plaintiff in the aforementioned action, and that the facts set forth in the foregoing ANSWER AND NEW MATTER OF PAUL B. ROEMER, M.D. are true and correct based upon my personal knowledge or upon my information and belief; and I make this statement subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

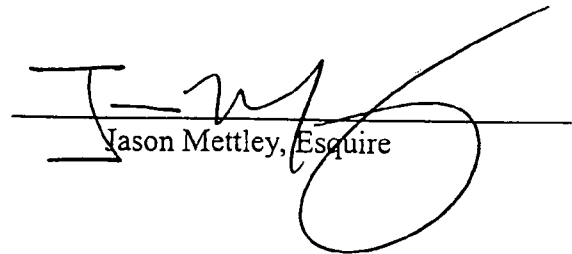
DATED: 2/21/01

  
\_\_\_\_\_  
Paul Brian Roemer, M.D.  
Plaintiff

# CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Answer and New Matter of Paul B. Roemer, M.D. was served upon counsel for plaintiff this 21<sup>st</sup> day of February, 2001, by First Class U.S. Mail, postage prepaid, addressed as follows:

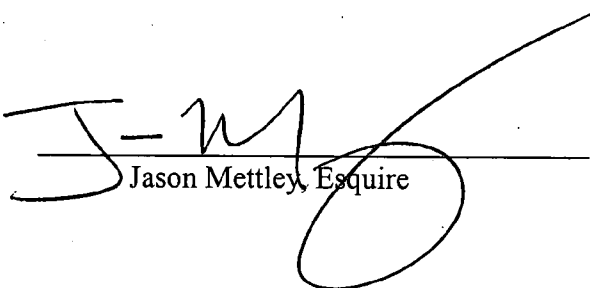
Edward J. Kabala, Esq.  
Kabala & Geeseman, P.C.  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222-3115

  
Jason Mettley, Esquire

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within Reply to New Matter of Paul B. Roemer, M.D. was served upon counsel for plaintiff this 18th day of July, 2001, by First Class U.S. Mail, postage prepaid, addressed as follows:

Edward J. Kabala, Esquire  
Susan Brahm Gunn, Esquire  
Kabala & Geeseman, P.C.  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222-3115

  
Jason Mettley, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

Plaintiff,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

CIVIL DIVISION

No. 01-74-CD

**ANSWER AND NEW MATTER OF  
CLEARFIELD PROFESSIONAL  
GROUP, LTD.**

Filed on behalf of Clearfield  
Professional Group, Ltd., Defendant

Counsel of Record for this Party:

Susan Brahm Gunn, Esq.  
Pa. I.D. #44755

KABALA & GEESEMAN  
Firm No. 172  
Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222

(412) 391-1334

**FILED**

JUL 02 2001

William A. Shaw  
Prothonotary

5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

CIVIL DIVISION

Plaintiff,

No. 01-74-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

**NOTICE TO PLEAD**

TO: Brian Paul Roemer, M.D.  
1015 Daisy Street  
Clearfield, Pennsylvania 16830

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed  
Answer and New Matter within twenty (20) days from service hereof or a judgment  
may be entered against you.

KABALA & GEESEMAN

By:



Susan Brahm Gunn  
Counsel for Defendant,  
Clearfield Professional Group, Ltd.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

CIVIL DIVISION

Plaintiff,

No. 01-74-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

**ANSWER AND NEW MATTER OF  
CLEARFIELD PROFESSIONAL GROUP, LTD.**

Defendant, Clearfield Professional Group, Ltd., by and through its counsel,  
Kabala & Geeseman, files the within Answer and New Matter, averring as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 1 and therefore denies same.
2. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments in Paragraph 2 and therefore denies same.
3. Admitted.
4. Admitted.
5. Denied. To the contrary, Defendant employs five (5) physicians.
6. Admitted.
7. Admitted.
8. Admitted in part, denied in part. Defendant admits that the language of Exhibit "A" is stated accurately in subparagraphs 8a and 8b, and Defendant



admits that its contract of employment with Plaintiff contemplated a 12-month term of employment, requiring 60 days' written notice thereafter to terminate. Defendant denies that the minimum term of said contract was 12 months in that death, disability and/or loss of a Pennsylvania license, malpractice insurance and privileges at Clearfield Hospital served to modify Plaintiff's term of employment.

9. Admitted in part and denied in part. Defendant admits that its contract of employment with Plaintiff contemplated a 12-month term of employment, requiring 60 days' written notice thereafter to terminate. Defendant denies that the minimum term of said contract was 12 months in that death, disability and/or loss of a Pennsylvania license, malpractice insurance and privileges at Clearfield Hospital served to modify Plaintiff's term of employment.

10. Admitted in part, denied in part. Defendant admits that Paragraph 10 states accurately language contained in Plaintiff's contract of employment. The remaining averments of Paragraph 10 are denied. To the contrary, Plaintiff's reference to the clause set forth in Paragraph 10 of his employment contract as a "non-compete covenant" is a conclusion of law to which no response is required. To the extent a response may be required, Defendant denies that such provision is a "non-compete covenant."

11. Admitted.

12. Defendant is without knowledge or information sufficient to form a belief as to the circumstances surrounding Dr. Roemer's purported suspicions and, therefore, denies same.

12a. Admitted.

12b. Admitted.

12c. Denied. To the contrary, at times an attending physician rather than the on-call physician would sign an insurance claim for work performed by the on-call physician. Defendant denies that it had a policy requiring its physicians to do so.

12d. Denied. To the contrary, insurance carriers do not compensate Defendant's physicians depending on their particular "rate of pay." Rather, insurance reimbursement rates are pre-established by the type of service provided and do not depend upon any physician's "rate of pay."

13. Defendant is without knowledge or information sufficient to form a belief as to the averments of Paragraph 13 and, therefore, denies same.

14. Admitted in part and denied in part. Defendant admits that its office manager, Brian Witherow, met with Dr. Roemer on or about May 26, 2000. The remaining averments in Paragraph 14 are denied. Defendant denies that Dr. Roemer raised concerns during his meeting with Mr. Witherow pertaining to the propriety of Defendant's billing practice. To the contrary, Plaintiff raised concerns related solely to his personal compensation.

15. Admitted in part and denied in part. Defendant admits that Mr. Witherow informed Plaintiff that he should be submitting claims to insurance carriers with his signature for work which he performed. The remaining averments of Paragraph 15 are denied. To the contrary, Mr. Witherow provided Plaintiff with guidance in the context of Plaintiff complaining to Mr. Witherow about the fairness of Defendant's bookkeeping practices affecting his own compensation, not the legal propriety of Defendant's billing practice.

16. Admitted in part and denied in part. Defendant admits that Mr. Witherow circulated a memorandum dated May 26, 2000. The remaining averments in Paragraph 16 are denied. To the contrary, Defendant denies that the memorandum was a memorialization of Mr. Witherow's conversation with Plaintiff. To the contrary, the memorandum noted Plaintiff's concern about the fairness of Defendant's billing practice and notified other Defendant physicians of Plaintiff's intent to change his billing procedure.

17. Denied. To the contrary, due to reasons unrelated to Defendant's billing practices, Plaintiff's relationship with Defendant began to deteriorate many months before Plaintiff raised concerns about the fairness of the on-call/attending physician "signature issue" and how it affected his personal compensation.

18. Admitted in part and denied in part. Defendant admits that Plaintiff submitted a letter of resignation dated July 13, 2000, notifying Defendant of Plaintiff's intent to resign after completion of 12 months of employment on

November 1, 2000. The remaining averments in Paragraph 18 are denied to the extent said averments suggest the reason for Plaintiff's submitting a letter of resignation, as Defendant is without knowledge or information sufficient to form a belief as to why Plaintiff submitted his letter of resignation.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 19 and, therefore, denies same.

20. Defendant is without knowledge or information sufficient to believe the truth of the averments pertaining to Plaintiff's beliefs as set forth in Paragraph 20 and therefore denies same.

20a. Denied. To the contrary, because Plaintiff was the only one of Defendant's physicians who performed full female examinations, any potential billing code problems related to full female examinations would have been created by Plaintiff as Defendant had no such requirement.

20b. Defendant is without knowledge or information sufficient to form a belief as to what Plaintiff learned at the seminar referred to and, therefore, denies same.

20c. Denied. To the contrary, Defendant had no policy resulting in overcharging insurance carriers for full female examinations. Therefore, any purported "overcharging" would have occurred at Plaintiff's direction as he was the only physician who performed full female examinations and Defendant had no such billing policy.

21. Defendant is without knowledge or information sufficient to form a belief as to what Plaintiff believed and what plaintiff decided to do before leaving Defendant's employ and, therefore, denies same.

22. Admitted.

23. Admitted.

24. Defendant is without knowledge or information sufficient to form a belief as to why Plaintiff returned to Defendant's offices on October 7, 2000 and, therefore, denies same.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 25 and, therefore, denies same.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 26 and, therefore, denies same.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 27 and, therefore, denies same.

28. Admitted in part and denied in part. The remaining averments of Paragraph 28 are denied. Defendant admits that it learned that Plaintiff had called the Clearfield Borough Police. Defendant is without knowledge or sufficient information to form a belief as to why Plaintiff called the Clearfield Borough Police and, therefore, denies same.

29. Admitted in part and denied in part. Defendant admits that Clearfield Borough Police officers came to Defendant's offices. The remaining averments of

Paragraph 29 are denied. Defendant is without knowledge or information sufficient to form a belief as to how long it took the police to arrive at its offices after being called or the employment status of the police agents who arrived and, therefore, denies same.

30. Admitted in part and denied in part. Defendant admits that, when Mr. Witherow was contacted by the police, Mr. Witherow referred the police to one of Defendant's shareholders, Dr. Richard A. Johnson. The remaining averments of Paragraph 30 are denied. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 30 and, therefore, denies same.

31. Admitted.

32. Admitted.

33. Denied. To the contrary, Dr. Johnson informed Dr. Roemer that he was relieved from his duties, intending fully to compensate Plaintiff for the remainder of his notice period.

34. Denied. To the contrary, at all times, Defendant has made available Plaintiff's personal belongings for him to retrieve from Defendant's offices.

35. Denied. To the contrary, Dr. Johnson did not terminate Plaintiff. Rather, Dr. Johnson relieved Plaintiff of his remaining duties through the end of his notice period. The remaining averments in Paragraph 35 are conclusions of law to

which no response is required. To the extent a response may be required, Defendant denies same.

36. Denied. Defendant denies that it terminated Plaintiff's employment. To the contrary, Plaintiff's previous act of submitting his notice of resignation served to end the employment relationship between Plaintiff and Defendant, effective November 1, 2000. The remaining averments in Paragraph 36 are conclusions of law to which no responses are required. To the extent responses may be required, Defendant denies same.

37. Denied. To the contrary, Defendant did not terminate Plaintiff's employment and Plaintiff never complained of the legal propriety of Defendant's billing practices. Plaintiff complained only of the fairness of Defendant's billing practices as applied to his own compensation.

38. Admitted in part and denied in part. Defendant admits that Dr. Johnson informed Plaintiff by letter dated October 10, 2000 that Defendant had not terminated him but instead only relieved him of his duties for the balance of his employment. The remaining averments of Paragraph 38 are denied. To the contrary, Dr. Johnson was correct in his assertion that Defendant had not terminated Plaintiff but instead relieved him of his duties for the balance of his employment period.

39. Denied. To the contrary, Defendant compensated Plaintiff fully for the reasonable value of all services performed on its behalf.

40. Paragraph 40 is a statement of incorporation which requires no response.

41. Admitted in part and denied in part. Defendant admits that its attorneys notified Plaintiff that Defendant would enforce Plaintiff's contractual obligations, specifically his agreement to compensate Defendant for costs associated with reproducing patient records in the event that Plaintiff practiced within the service area of Clearfield Hospital within 36 months of his separation of employment with Defendant, and Plaintiff's agreement to pay Defendant \$1,000.00 per month for 24 months as liquidated damages for his practicing within the service area of Clearfield Hospital within 36 months of his separation. The remaining averment in Paragraph 41 is a conclusion of law to which no response is required. To the extent a response may be required, Defendant denies same.

42. Paragraph 42 contains conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

43. Admitted in part, denied in part. Defendant admits that Plaintiff's attorney notified Defendant by letter dated November 19, 2000 of Plaintiff's belief that he was not obligated to honor his contractual agreements to pay for copying costs associated with patient records and to pay Defendant \$1,000.00 monthly for 24 months as liquidated damages for practicing within the service area of Clearfield Hospital within 36 months of his separation from employment with Defendant. The remaining averments in Paragraph 43 are denied. Defendant is without knowledge



or information sufficient to form a belief as to whether Plaintiff employed said counsel and, therefore, denies same. By way of further response, Plaintiff's characterization of his legal obligation as a "non-compete covenant" is a conclusion of law to which no response is required. To the extent a response may be required, Defendant denies same.

44. The averments in Paragraph 44 are conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

45. Paragraph 45 contains an incorporation clause to which no response is required.

46. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 46 and, therefore, denies same.

47. Admitted.

48. Admitted.

49. Denied. To the contrary, Defendant compensated Plaintiff fully for the reasonable value of all services he performed on its behalf.

50. Paragraph 50 is an incorporation clause to which no response is required.

51. Denied. Defendant obtained information in May 2001 that Plaintiff was no longer practicing medicine in Clearfield and that he relocated out of the area to accept a staff physician position at a correctional facility.

52. Denied. To the contrary, Defendant notified appropriately those of its patients who had treated with Plaintiff of Plaintiff's relocation in Clearfield, and offered appropriately other of its physicians to provide them with care if they so chose.

53. Denied. To the contrary, at all times Defendant was willing to and did release to Plaintiff patient medical records who provided written releases. By way of further response, when Plaintiff learned in May 2001 that Plaintiff had abandoned his private practice in Clearfield and relocated out of the area to accept a position as staff physician at a correctional facility, Defendant ceased its practice of forwarding patient records to Plaintiff's former office which he had vacated.

54. Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 54 and, therefore, denies same.

55. Denied. To the contrary, Defendant never engaged in any acts intended to harm Plaintiff by preventing individuals from becoming Plaintiff's patients.

56. Paragraph 56 contains conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 57 and, therefore, denies same.

58. Paragraph 58 contains an incorporation clause which requires no response.

59. Admitted in part, denied in part. Defendant admits that Plaintiff had various personal effects in Defendant's offices as identified in Paragraph 59, except Defendant denies that Plaintiff left in its offices a pulse oximeter belonging to Plaintiff.

60. Paragraph 60 contains conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

61. Denied. To the contrary, at all times Defendant has remained available and willing to return to Plaintiff all of his personal effects which he left in Defendant's offices.

62. Paragraph 62 contains conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

63. Denied. To the contrary, at all times Defendant has made available to Plaintiff all of his personal effects which he left in its offices.

64. Paragraph 64 contains incorporation clause language which requires no response.

65. Paragraph 65 contains conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

66. Paragraph 66 contains conclusions of law to which responses are not required. To the extent responses may be required, Defendant denies same.

NEW MATTER

67. The averments of Paragraphs 1 through 66 are incorporated by reference as though fully set forth herein.

68. Plaintiff failed to describe with particularity as required by Pa.R.C. Rule 1028(a)(3) any conduct alleged to be outrages or malicious in Count 5 of his Complaint seeking punitive damages.

69. Plaintiff's prayer for relief set forth at end of each Count is inappropriate because the present action is a civil action at law and, therefore, equitable relief is improper.

70. Defendant incorporates by reference all averments of fact set forth in its Complaint and Reply to New Matter in a companion case in the Court of Common Pleas of Clearfield County, Pennsylvania entitled, Clearfield Professional Group, Ltd. v. Paul B. Roemer, M.D., No. 01-87-CD. (Copies of Defendant's Complaint and Reply to New Matter against Plaintiff in said companion case are attached hereto as Exhibits "A" and "B").

71. Plaintiff fails to state claims upon which relief can be granted.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CLEARFIELD PROFESSIONAL GROUP, LTD.,

Case No.

Plaintiff,

**COMPLAINT IN CIVIL ACTION**

vs.

PAUL B. ROEMER, M.D.,

Code:

Defendant.

Filed on Behalf of Plaintiff,  
Clearfield Professional Group, Ltd.

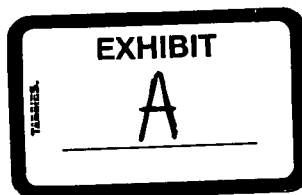
Counsel of Record for this Party:

Edward J. Kabala, Esq.  
Pa. I.D. #00291

Susan Brahm Gunn, Esq.  
Pa. I.D. #44755

KABALA & GEESEMAN  
Firm No. 172  
Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 391-1334

**JURY TRIAL DEMANDED**



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CLEARFIELD PROFESSIONAL GROUP, LTD.,	)	
	)	Case No.
Plaintiff,	)	
	)	
vs.	)	
	)	
PAUL B. ROEMER, M.D.,	)	
	)	
Defendant.	)	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.  
IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR  
TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN  
GET LEGAL HELP.

**OFFICE OF THE COURT ADMINISTRATOR**  
Court of Common Pleas of Clearfield County  
Clearfield County Courthouse  
One North 2nd Street  
Clearfield, PA 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CLEARFIELD PROFESSIONAL GROUP, LTD.,	)	
	)	Case No.
Plaintiff,	)	
	)	
vs.	)	
	)	
PAUL B. ROEMER, M.D.,	)	
	)	
Defendant.	)	

**COMPLAINT IN CIVIL ACTION**

Plaintiff, Clearfield Professional Group, Ltd., by its attorneys, Kabala & Geeseman, files the following Complaint against Defendant, Paul B. Roemer, M.D. on grounds of which the following is a statement:

1. Plaintiff, Clearfield Professional Group, Ltd. ("Plaintiff"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business located at 820 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania 16830.
2. Defendant, Paul B. Roemer, M.D. ("Defendant"), is an adult individual who resides at 1015 Daisy Street, Clearfield, Clearfield County, Pennsylvania 16830.
3. At all times relevant hereto Plaintiff has been engaged in the practice of medicine in and around the area of Clearfield, Pennsylvania by and through its physician employees.

4. At all times relevant hereto Defendant has been a physician licensed to practice medicine in the Commonwealth of Pennsylvania.

5. On or about October 26, 1999, Plaintiff and Defendant entered into a written Employment Contract, to be effective November 1, 1999 ("Employment Contract"), whereby Defendant agreed to work for Plaintiff as a physician-employee until such Employment Contract was terminated pursuant to the terms set forth therein. (A copy of the Employment Contract is attached hereto as Exhibit 1).

6. Pursuant to the terms of the Employment Contract, Defendant was required to provide written notice to Plaintiff at least sixty (60) days prior to terminating if he chose to leave Clearfield after his initial twelve months of employment.

7. By letter dated July 13, 2000, Defendant provided written notice to Plaintiff that his employment with Plaintiff would terminate effective November 1, 2000. (A copy of Defendant's letter of July 13, 2000 is attached hereto as Exhibit 2).

8. Subsequent to July 13, 2000 Defendant continued to work actively for Plaintiff through October 7, 2000.

9. On or about October 7, 2000, Dr. Richard A. Johnson, an officer and employee of Plaintiff, learned that Defendant had collected and moved to Defendant's office, for no apparent purpose, an unusually large number of patient files.

10. At all times relevant hereto, the patient files which Defendant had collected were the property of Plaintiff.

11. Plaintiff believes and therefore avers that Defendant had collected the patient files for the purpose of obtaining patient information, such as names and addresses, insurance



carriers, appointment schedules, and other confidential medical and proprietary information, for use in the medical practice the Defendant intended to operate after November 1, 2000.

12. Upon learning that Defendant had collected the files in question, Dr. Johnson met with Defendant and informed Defendant that as of October 7, 2000 he was relieved of his duties for the remainder of his term of employment, *i.e.*, through November 1, 2000.

13. Immediately after being relieved of his duties on October 7, 2000, Defendant announced the opening of his own medical practice in Clearfield, Pennsylvania and Defendant directed the telephone company, Verizon (formerly Bell Atlantic), to disconnect certain telephone numbers that were "owned" and paid for by Plaintiff, but listed in Defendant's name, *i.e.*, 814-765-2883, 814-765-5524 and 814-765-6412 (the "Telephone Numbers").

14. At the Defendant's request, which was made without advance notice to Plaintiff, Verizon disconnected the Telephone Numbers that Plaintiff had owned and paid for, but which were listed in Defendant's name.

15. Among the telephone numbers which were disconnected at the request of Defendant was the number 814-765-2883 which was used by Plaintiff for patient billing inquiries and electronic transmittal of billing information.

16. Despite request by Plaintiff, Defendant has refused to acknowledge to Verizon that the Telephone Numbers belonged to and were paid for by Plaintiff.

17. As a result of the Telephone Numbers being disconnected, Plaintiff has suffered substantial harm, including but not limited to a loss of good will, and Plaintiff has been caused to incur substantial costs relating to obtaining new telephone numbers for billing inquiries and transmittal of billing information, and communicating the new telephone numbers to patients and others.

18. Pursuant to the terms of the Employment Contract, if Defendant terminated his employment with Plaintiff and practiced medicine within the service area of Clearfield Hospital within thirty-six (36) months of the termination of employment, the Defendant was required to pay to Plaintiff the sum of \$24,000.00 at rate of \$1,000.00 per month beginning 30 days after the termination of employment.

19. Defendant is practicing in the service area of Clearfield Hospital and has been practicing in that area since termination of his employment.

20. Plaintiff has demanded payment of the \$24,000.00 in accordance with the terms of the Employment Contract, but Defendant has refused, without justification, to pay any sums to Plaintiff.

21. Pursuant to the terms of his Employment Contract, it was agreed that in the event Defendant's employment terminated, Defendant would pay Plaintiff for clerical time required to copy patient records requested by Defendant.

22. Defendant has submitted requests for patient records and in certain circumstances, an appropriate release signed by the patient.

23. At the request of Defendant, Plaintiff copied a substantial number of patient records.

24. Plaintiff has demanded payment for copying costs in accordance with the terms of the Employment Contract and Pennsylvania Department of Health regulations governing permissible charges, but Defendant has refused, without justification, to pay any sums to Plaintiff.

## **COUNT I**

### **BREACH OF CONTRACT**

25. Defendant's failure to pay the \$24,000.00 in installments of \$1,000.00 per month beginning thirty (30) days after termination of employment is a material breach of the terms of the Employment Contract.

26. Defendant's failure to compensate Plaintiff for patient records which were copied at Defendant's request is a violation of the terms of his Employment Contract.

27. By reason of Defendant's breach of the Employment Contract Plaintiff has been damaged in an amount in excess of \$20,000.00.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$20,000.00 plus costs and interest.

## **COUNT II**

### **BREACH OF DUTY OF LOYALTY**

28. Paragraphs 1 through 27 are incorporated herein as though set forth at length.

29. As a physician-employee of Plaintiff, Defendant owed a duty of loyalty to Plaintiff.

30. The duty of loyalty owed to Plaintiff required Defendant to act exclusively for the benefit of Plaintiff.

31. Defendant breached the duty of loyalty that he owed to Plaintiff by making a record of confidential medical and proprietary information pertaining to Plaintiff's patients for use in Defendant's medical practice. These actions were taken while Defendant was an employee of Plaintiff.

32. Plaintiff believes and therefore avers that Defendant has used and continues to use confidential medical and proprietary information pertaining to Plaintiff's patients which Defendant obtained while employed by Plaintiff without having first obtained authority or approval from Plaintiff or its patients.

33. Defendant's actions in disconnecting Plaintiff's Telephone Numbers dedicated for billing inquiries and transmittal of data, and his refusal to direct Verizon to reconnect the Telephone Numbers, were in breach of his duty of loyalty owed to Plaintiff.

34. Prior to October 7, 2000, while Defendant was still an employee of Plaintiff, Defendant improperly solicited and induced other employees to terminate their employment with Plaintiff.

35. As the result of Defendant's improper solicitations and inducements, two of Plaintiff's employees terminated their employment with Plaintiff.

36. Defendant's actions in soliciting other employees to terminate their employment with Plaintiff, such actions being taken while Defendant remained an employee of Plaintiff, constitute a breach of the duty of loyalty owed to Plaintiff by Defendant at the time.

37. Defendant's actions in breach of his duty of loyalty owed to Plaintiff caused Plaintiff to incur substantial costs, to suffer a substantial loss of good will and to suffer substantial harm.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant in an amount in excess of \$20,000.00, plus costs and interest.

### **COUNT III**

#### **MISAPPROPRIATION**

38. Paragraphs 1 through 37 are incorporated herein as though set forth at length.

39. At all times relevant hereto Plaintiff owned and paid for the rights to use the Telephone Numbers.

40. At all times relevant hereto Defendant knew or should have known that Plaintiff owned and paid for the rights to use the Telephone Numbers.

41. Defendant has never had any right to ownership and/or right to use of the aforementioned Telephone Numbers, except as an employee of Plaintiff, and as specifically authorized by Plaintiff.

42. Plaintiff believes and therefore avers that Defendant has advised Verizon to terminate Plaintiff's use of the Telephone Numbers and install a recording advising callers that future calls should be directed to Defendant's new office at 814-762-2222.

43. By advising Verizon to terminate Plaintiff's use of the Telephone Numbers and direct calls to his new business telephone number Defendant has exercised unlawful control over and wrongfully appropriated Plaintiff's right to ownership and/or use of the Telephone Numbers.

44. By advising Verizon to terminate Plaintiff's use of the Telephone Numbers Defendant has committed a misappropriation of Plaintiff's property and/or rights to property.

45. By reason of the foregoing Plaintiff has suffered and will continue to suffer damages, including but not limited to a loss of good will, deprivation of Plaintiff's right to use the Telephone Numbers and other damages related to replacement of the Telephone Numbers.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant in an amount in excess of \$20,000.00 plus costs and interest.

**COUNT IV**

**PUNITIVE DAMAGES**

46. The averments of paragraphs 1 through 45 above are incorporated herein by reference as though set forth in full.

47. At all times relevant hereto, Defendant has acted in bad faith and with the deliberate intent to (a) exercise unlawful control over and/or wrongfully appropriate Defendants property and/or rights to use property, (b) convert Plaintiff's Telephone Numbers and other property for the benefit of Defendant, (c) deprive Plaintiff of the value of the good will associated with Plaintiff's Telephone Numbers and patient records and (d) solicit other employees to terminate employment with Plaintiff while Defendant himself was employed by Plaintiff.

48. Defendant's conduct in this matter has been willful, wanton and outrageous.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendant in an amount in excess of \$20,000.00 for punitive damages and costs.

Respectfully submitted,

KABALA & GEESEMAN

By: \_\_\_\_\_  
Edward J. Kabala

By: \_\_\_\_\_  
Susan Brahm Gunn

Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 391-1334

VERIFICATION

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

By: \_\_\_\_\_

MAR 13 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CLEARFIELD PROFESSIONAL GROUP, LTD.,

Case No. 01-87-CD

Plaintiff,

**REPLY TO NEW MATTER**

vs.

PAUL B. ROEMER, M.D.,

Code:

Defendant.

Filed on Behalf of Plaintiff,  
Clearfield Professional Group, Ltd.

Counsel of Record for this Party:

William L. Stang, Esq.  
Pa. I.D. #33221

Susan Brahm Gunn, Esq.  
Pa. I.D. #44755

KABALA & GEESEMAN  
Firm No. 172  
Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 391-1334

**FILED**

MAR 12 2001

7:11:55pm  
William A. Shaw  
Prothonotary

EXHIBIT

B



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CLEARFIELD PROFESSIONAL GROUP, LTD.,	)	
	)	Case No. 01-87-CD
Plaintiff,	)	
	)	
vs.	)	
	)	
PAUL B. ROEMER, M.D.,	)	
	)	
Defendant.	)	

**REPLY TO NEW MATTER**

Plaintiff, Clearfield Professional Group, Ltd., by its attorneys, Kabala & Geeseman, files the following Reply to New Matter:

49. Paragraph 49 contains a statement of incorporation to which no response is required.

50. Paragraph 50 of Defendant's New Matter contains conclusions of law to which no response is required. To the extent a response may be required, Defendant denies same.

51. Paragraph 51 of Defendant's New Matter contains conclusions of law to which no response is required. To the extent a response may be required, Defendant denies same. By way of further response, Defendant's Notice of Termination dated July 13, 2000, served to terminate the parties' employment relationship effective November 1, 2000 and, therefore, Plaintiff's action of relieving Defendant of his duties from October 7, 2000 through the effective-date of his employment was not a material breach of contract.

52. Paragraph 52 of Defendant's New Matter contains conclusions of law to which no response is required. To the extent a response may be required, Defendant denies same. By way of further response, Defendant's Notice of Termination dated July 13, 2000 served to terminate the parties' employment relationship effective November 1, 2000 and, therefore, Plaintiff's action of relieving Defendant of his duties from October 7, 2000 through the effective date of his employment was not a material breach of contract.

53. Paragraph 53 of Defendant's New Matter contains conclusions of law to which no response is required. To the extent a response may be required, Defendant denies same. By way of further response, Defendant's Notice of Termination dated July 13, 2000 served to terminate the parties' employment relationship effective November 1, 2000 and, therefore, Plaintiff's action of relieving Defendant of his duties from October 7, 2000 through the effective date of his employment was not a material breach of contract.

54. Paragraph 54 of Defendant's New Matter contains conclusions of law to which no response is required. To the extent a response may be required, Defendant denies same. By way of written response, as an employee of Plaintiff, Defendant had no legal duty to notify patients of Plaintiff when he had treated of his new address.

Respectfully submitted,

KABALA & GEESEMAN

By:



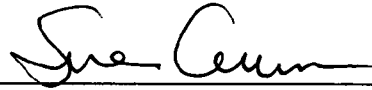
Susan Brahm Gunn

Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 391-1334

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Answer and New Matter of Clearfield Professional Group, Ltd. was served upon the following individual(s) by first class U.S. Mail, postage prepaid, this 29th day of June 2001:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
\_\_\_\_\_

304  
JUN 29 2001  
PITTSBURGH, PA  
U.S. MAIL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

Plaintiff,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

CIVIL DIVISION

No. 01-74-CD

**DEFENDANT'S WITHDRAWAL OF  
PRELIMINARY OBJECTIONS TO  
COMPLAINT**

Filed on behalf of Clearfield  
Professional Group, Ltd., Defendant

Counsel of Record for this Party:

William L. Stang, Esq.  
Pa. I.D. #33221

Susan Brahm Gunn, Esq.  
Pa. I.D. #44755

KABALA & GEESEMAN  
Firm No. 172  
Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222

(412) 391-1334

**FILED**

MAY 30 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

CIVIL DIVISION

Plaintiff,

No. 01-74-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

**WITHDRAWAL OF PRELIMINARY OBJECTIONS  
TO COMPLAINT**

Defendant, Clearfield Professional Group, Ltd., by and through its counsel, files the within Withdrawal of Preliminary Objections to Complaint of Plaintiff. In accordance with the Pennsylvania Rules of Civil Procedure, Defendant will file an Answer to Complaint.

KABALA & GEESEMAN

By:



Susan Brahm Gunn

Counsel for Defendant,  
Clearfield Professional Group, Ltd.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Withdrawal of Preliminary Objections to Complaint was served upon the following individual(s) by first class U.S. Mail, postage prepaid, this 24th day of May 2001:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

By:

Sue Gunn

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

Plaintiff,

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

CIVIL DIVISION

No. 01-74-CD

**PRELIMINARY OBJECTIONS TO  
COMPLAINT**

Filed on behalf of Clearfield  
Professional Group, Ltd., Defendant

Counsel of Record for this Party:

William L. Stang, Esq.  
Pa. I.D. #33221

Susan Brahm Gunn, Esq.  
Pa. I.D. #44755

KABALA & GEESEMAN  
Firm No. 172  
Dominion Tower, 29th Floor  
625 Liberty Avenue  
Pittsburgh, PA 15222

(412) 391-1334

**FILED**

FEB 20 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIAN PAUL ROEMER, M.D.,

CIVIL DIVISION

Plaintiff,

No. 01-74-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant.

**PRELIMINARY OBJECTIONS TO COMPLAINT**

Defendant, Clearfield Professional Group, Ltd., by and through its counsel, Susan Brahm Gunn, Esquire, William L. Stang, Esquire and Kabala & Geeseman, files the within Preliminary Objections to Complaint of Plaintiff as follows:

1. Plaintiff commenced this civil action against Defendant seeking, *inter alia*, damages for tortious interference with prospective contractual relations and punitive damages.

**I. MOTION TO DISMISS COUNT III - TORTIOUS INTERFERENCE  
WITH PROSPECTIVE CONTRACTUAL RELATIONS**

2. In Count III of the Complaint (paragraphs 50 through 57), Plaintiff has attempted to state a cause of action for tortious interference with prospective contractual relations.

3. To state a cause of action for tortious interference with prospective contractual relations, a complaint must allege (a) a prospective contractual relationship between plaintiff and third parties, (b) a purpose or intent to harm



plaintiff by preventing the relationship from accruing, (c) absence of privilege or justification, and (d) the occurrence of actual harm or damage to the plaintiff as a result of defendant's conduct. Cloverleaf Development, Inc. v. Horizon Financial F.A., 500 A.2d 163 (Pa. Super. 1985).

4. In paragraph 52 of the Complaint, Plaintiff alleges (a) that Defendant intentionally told patients that Plaintiff treated that Plaintiff was leaving the Clearfield area and (b) that Defendant directed or attempted to direct those patients to other physicians for care.

5. In paragraph 53 of the Complaint, Plaintiff alleges that Defendant has refused to release medical records belonging to individuals who were or are patients of Defendant and who wish to become patients of Plaintiff.

6. In Paragraph 54 of the Complaint, Plaintiff alleges that "on information and belief, there is a reasonable likelihood that Dr. Roemer would have become the physician of these and numerous other individuals but for CPG's conduct."

7. Even assuming that the matters set forth in Count III were true, Plaintiff has failed to state a claim for tortious interference with prospective contractual relations because Plaintiff has failed to allege facts showing a reasonable likelihood or probability that a business relationship between Plaintiff and any patient would have occurred absent the alleged wrongful act. In other words, Plaintiff has failed to identify the prospective business relationships that were disrupted.

8. Even assuming that the matters set forth in Count III were true, Plaintiff has failed to state a claim for intentional interference with prospective contractual relations because Plaintiff has failed to allege sufficient facts to support the element of actual harm which is necessary in a claim for tortious interference with prospective contractual relations.

9. Plaintiff is unable to allege sufficient facts to support the required element of actual harm because Plaintiff is unable to determine with any degree of certainty which patients might have chosen Plaintiff as their physician and what compensation or profit Plaintiff would have earned from each patient. In other words, Plaintiff's claim is based on nothing more than hope and speculation.

10. In addition, Plaintiff fails to state a claim upon which relief may be granted because Count III of the Complaint does not set forth the alleged damages with any degree of specificity as required by Pa. R.C.P. Rule 1019(a).

WHEREFORE, Plaintiff respectfully requests that Count III of Plaintiff's Complaint be dismissed.

## **II. MOTION TO STRIKE PUNITIVE DAMAGES**

11. The averments of paragraphs 1 through 10 above are incorporated by reference as though set forth fully herein.

12. In Count V of the Complaint, Plaintiff has made a request for punitive damages.

13. Plaintiff fails to describe with particularity as required by Pa. R.C.P. Rule 1028(a)(3), any conduct alleged to be outrageous or malicious.

WHEREFORE, Defendant requests that the demand for punitive damages contained in Count V be stricken.

**III. MOTION TO STRIKE REQUEST FOR OTHER RELIEF**

14. The averments of paragraphs 1 through 13 above are incorporated by reference as though fully set forth herein.

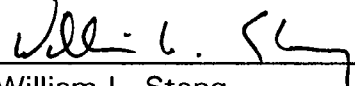
15. The "WHEREFORE" clause of each Count in the Complaint contains a request for money damages and "such other and further relief as may be deemed appropriate."

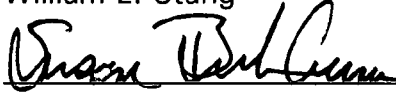
16. The present action is a civil action at law and, therefore, equitable relief is improper.

17. As a matter of law, Plaintiff should be required to plead the specific nature of all relief sought.

18. Plaintiff's request for "such other and further relief as may be deemed appropriate" is inappropriate and should be stricken.

KABALA & GEESEMAN

By:   
William L. Stang

By:   
Susan Brahm Gunn

Counsel for Defendant,  
Clearfield Professional Group, Ltd.

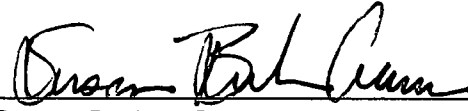
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Preliminary  
Objections to Complaint was served upon the following individual(s) by first class  
U.S. Mail, postage prepaid, this 19th day of February 2001:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 152202

KABALA & GEESEMAN

By:

  
\_\_\_\_\_  
Susan Brahm Gunn

FILED

FEB 20 2001

M/1050/11000

William A. Shaw

Proprietary

*[Signature]*

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10602

ROEMER, PAUL BRIAN, M.D.

01-74-CD

VS.

CLEARFIELD PROFESSIONAL GROUP, LTD.

COMPLAINT

SHERIFF RETURNS

NOW JANUARY 18, 2001 AT 11:30 AM EST SERVED THE WITHIN COMPLAINT ON  
CLEARFIELD PROFESSIONAL GROUP, LTD., DEFENDANT AT EMPLOYMENT,  
820 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY  
HANDING TO JOSEPH VETRANO, EMPLOYEE, A TRUE AND ATTESTED COPY OF  
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS  
THEREOF.

SERVED BY: MCCLEARY

Return Costs

Cost	Description
------	-------------

19.00	SHFF. HAWKINS PAID BY: ATTY.
-------	------------------------------

10.00	SURCHARGE PAID BY: ATTY.
-------	--------------------------

Sworn to Before Me This

23 Day Of January 2001

*[Signature]*

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

*[Signature]*

So Answers,

*[Signature]*  
*[Signature]*

Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

Plaintiff

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.

Defendant

) CIVIL DIVISION

)

) No. 01-74-00

)

) COMPLAINT

)

) Code:

)

) Filed on behalf of Plaintiff

)

Counsel of Record:

Jason Mettley, Esquire

Pa. I.D. #81966

Jubelirer, Pass & Intrieri, P.C.

Firm #141

219 Fort Pitt Boulevard

Pittsburgh, Pennsylvania 15222

(412) 281-3850

JURY TRIAL DEMANDED

**FILED**

JAN 16 2001

William A. Shaw  
Prothonotary

41

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	No.
	)	
CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Defendant	)	JURY TRIAL DEMANDED

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED in court. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth set forth against you. You are warned that IF YOU FAIL to do so, the case may proceed without you and A JUDGMENT may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or other relief requested by the plaintiff. YOU MAY LOSE MONEY OR PROPERTY or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:**

LAWYER REFERRAL SERVICE --

Court Administrator  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, Pennsylvania 16830  
(814) 765-2641 Ext. 50-51



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PAUL BRIAN ROEMER, M.D.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	No.
	)	
CLEARFIELD PROFESSIONAL	)	
GROUP, LTD.	)	
	)	
Defendant	)	JURY TRIAL DEMANDED

**COMPLAINT**

AND NOW COMES the plaintiff, Paul Brian Roemer, M.D., by and through his attorneys, Jason Mettley, Esquire, and Jubelirer, Pass & Intrieri, P.C., and files the following Complaint and avers in support thereof:

1. Plaintiff, Paul Brian Roemer, M.D. ("Dr. Roemer"), is an adult residing at 1015 Daisy Street, Clearfield, Clearfield County, Pennsylvania 16830.
2. Dr. Roemer is engaged in the practice of medicine with the Clearfield Adult Medicine Associates, Inc., which is located at 500 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania 16830. Dr. Roemer is the sole shareholder of Clearfield Adult Medicine Associates, Inc.
3. Defendant, Clearfield Professional Group, Ltd., ("CPG") is a professional corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, which maintains an office located at 820 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania 16830.

4. At all times relevant hereto, CPG was acting as a professional corporation and also by and through the acts of its authorized agents, servants and employees.

5. CPG has approximately six (6) employees and/or shareholders who are licensed physicians engaged in the practice of medicine on behalf of CPG in Clearfield County.

6. In or about October, 1999, Dr. Roemer and CPG executed an "Employment Contract" (the "Contract") effective November 1, 1999. A true and correct copy of the Contract is attached hereto and incorporated herein as Exhibit "A".

7. Incorporated into the Contract is a Group Recruitment Agreement (the "Group Agreement"), a true and correct copy of which is attached hereto and incorporated herein as Exhibit "B".

#### **I. The Contract**

8. The Contract created an employment relationship between Dr. Roemer and CPG for a term no less than twelve months, providing in relevant part:

a. "Dr. Roemer is free to leave C.P.G. at any time following the initial 12 month period as long as he provides written notice to C.P.G. 60 days prior to leaving..." See: Exhibit A.

b. "C.P.G. may discharge Dr. Roemer only at the end of the first 12 month period, or each succeeding 6 month period, only by written notice, given 60 days prior to discharge." See: Exhibit A.

9. As described above, the minimum term of the Contract was twelve (12) months, and regardless of which party intended to terminate the Contract after twelve (12) months, sixty (60) days written notice was a mandatory condition precedent to effecting such termination.

10. The Contract also sought to impose post-employment obligations on Dr. Roemer through the following covenant not to compete:

“Should Dr. Roemer leave C.P.G. at any time for any reason, and practice within the service area of Clearfield Hospital within 36 months of separation, C.P.G. will provide him with copies of medical records of any patient who signs a request for record transfer at a cost to reflect only the clerical time to reproduce the records, and, Dr. Roemer will pay C.P.G. \$1,000.00 per month for 24 months, starting 30 days after being separated from C.P.G.”

*See:* Exhibit A. (for simplicity, this provision will be hereinafter referred to as the “Non-compete Covenant”).

## **II. The Employment Relationship**

11. Pursuant to the contract, Dr. Roemer began practicing medicine on CPG’s behalf on or about November 1, 1999.

12. In or about May, 2000, Dr. Roemer became suspicious that the following CPG billing practice might have been improper:

- a. On certain occasions, CPG’s on-call physician would perform admissions and provide treatment to a patient on behalf of another CPG doctor who was the patient’s attending physician;
- b. After this work was performed, CPG would submit documentation to the particular insurance carrier so that it would receive payment for the physician’s services;

c. CPG policy required that the documentation submitted to the particular insurance carrier bear the signature of the attending physician instead of the on-call physician who actually performed the work.

d. Upon information and belief, CPG was then compensated by the insurance carrier at the attending physician's rate of pay, not the on-call physician's.

13. Dr. Roemer further investigated the propriety of this CPG billing practice, and later in May, 2000, came to believe that this practice was not simply improper, but possibly illegal.

14. Dr. Roemer promptly met with Brian Witherow, CPG's Office Manager, on or about May 26, 2000 to discuss his concerns regarding the propriety of CPG's billing practice.

15. During this discussion, Dr. Roemer reported his concerns about the billing practice and informed Witherow that any admissions he performed should be submitted to the insurance carriers with his signature, and that the attending physician should not submit cards to the insurer when he had actually performed the work.

16. This discussion was memorialized in a memorandum circulated by Witherow to CPG physicians dated May 26, 2000.

17. Following Dr. Roemer's complaint to CPG about the above-referenced billing practice, and notification that he would no longer follow that practice, his relationship with CPG began to deteriorate.

18. Consequently, and in accordance with the Contract, Dr. Roemer submitted a letter to Witherow dated July 13, 2000 notifying CPG of his intent to resign after the completion of 12 months of employment on November 1, 2000.

19. On or about July 26, 2000, Dr. Roemer attended a professional seminar in DuBois, Pennsylvania, presented by Fenner Physician Services Corp.
20. At the seminar, Dr. Roemer obtained information that led him to believe another CPG billing practice was problematic:
- a. CPG practice required entering one billing code on insurance forms when a CPG physician performed a full female examination;
  - b. At the seminar, Dr. Roemer learned that the proper billing practice for female examinations required the entry of two separate billing codes;
  - c. On information and belief, CPG's policy resulted in overcharging insurance carriers for full female examinations.
21. Having discovered these CPG billing practices, which he believed to be improper or potentially unlawful, Dr. Roemer decided to conduct an audit of all his patients' files before leaving CPG in November to caution against any allegation of impropriety later being leveled against him.

### **III. Dr. Roemer's Firing**

22. On October 7, 2000, Dr. Roemer was scheduled as CPG's on call physician.
23. After attending to some of his patients at the Clearfield Hospital that morning, Dr. Roemer went to CPG's office.
24. Dr. Roemer went to CPG's office that morning to attend to his duties and to continue performing the above-referenced audit.
25. Dr. Roemer worked until approximately 11:30 a.m., when he left for lunch and to take care of some errands.
26. Dr. Roemer returned to CPG's office at approximately 1:30 p.m.

27. Upon entering his office, he discovered that nearly half of his patients' files were gone.

28. Concerned that someone might have unlawfully broken into CPG's office, Dr. Roemer called the Clearfield Borough Police.

29. Within five minutes, two Clearfield Borough Police Officers, accompanied by a police trainee, arrived at CPG's offices.

30. Dr. Roemer described the problem to the police and suggested that they call Witherow; in turn, Witherow told the police to contact Dr. Richard A. Johnson, President of CPG.

31. The police called Dr. Johnson and he arrived at CPG's offices within approximately 15-20 minutes.

32. Dr. Johnson told the police he had removed the missing files and locked them in another office.

33. Dr. Johnson then confronted Dr. Roemer, in front of the police, and told Dr. Roemer that he was fired, demanded Dr. Roemer's keys to CPG's offices, and ordered Dr. Roemer to leave the premises.

34. Dr. Johnson refused Dr. Roemer's request to retrieve all of his personal effects from his office.

35. Dr. Johnson, in terminating Dr. Roemer, was acting with actual or apparent authority of CPG.

36. CPG's termination of Dr. Roemer, initiated without prior written notice and effective prior to the expiration of 12 months of employment, violated numerous significant provisions of the Contract.

37. On information and belief, CPG's improper termination of Dr. Roemer was in bad faith as it was in retaliation for his investigation into, and objection to, improper and/or illegal billing practices maintained by CPG.

38. After being fired by Dr. Johnson on October 7, 2000, Dr. Roemer received a letter from Dr. Johnson dated October 10, 2000 that incorrectly asserted that CPG had not terminated Dr. Roemer, but instead merely relieved him of his duties to CPG for the balance of employment.

39. Nevertheless, Dr. Roemer was not, and has not been, compensated by CPG for the month of October, 2000.

### **III. Statement of Legal and Equitable Claims**

#### **COUNT I ACTION FOR DECLARATORY RELIEF**

40. Dr. Roemer hereby incorporates by reference the averments contained in Paragraphs 1-39 as fully as though set forth herein at length.

41. Dr. Roemer received a letter dated October 18, 2000 from CPG's attorneys asserting, *inter alia*, that Dr. Roemer had an obligation to comply with the Non-compete Covenant contained the Contract.

42. Because CPG terminated Dr. Roemer, breaching and repudiating the Contract, they are not entitled to enforce the Non-compete Covenant against Dr. Roemer.

43. After receiving the October 18, 2000 letter from CPG's attorneys, Dr. Roemer subsequently employed the undersigned whom sent a reply dated November 19, 2000 to CPG's attorney's asserting that he was not obligated to honor the Non-compete Covenant.

44. There is a real, substantial and justiciable dispute between Dr. Roemer and CPG concerning the rights, status, and legal relations between the parties, if any, under the Contract.

WHEREFORE, Plaintiff, Paul Brian Roemer, M.D., pursuant to the Declaratory Judgments Act, 42 Pa.C.S.A. § 7542 *et seq.*, respectfully requests that the Court enter an Order in his favor:

- a. declaring that Defendant wrongfully repudiated the Contract by terminating Plaintiff on October 7, 2000;
- b. rescinding the Contract in totality;
- c. declaring that any post-employment duties or obligations imposed by the Contract are otherwise unenforceable against Plaintiff;
- d. awarding counsel fees, interest and costs to the plaintiff; and
- e. directing such other and further relief as may be appropriate.

**COUNT II**  
**ACTION ON QUANTUM MERUIT**

45. Dr. Roemer hereby incorporates by reference the averments contained in Paragraphs 1-44 as fully as though set forth herein at length.

46. Dr. Roemer performed services on behalf of CPG and for the benefit of CPG from October 1 through October 7, 2000.

47. Prior to his termination, Dr. Roemer's monthly salary with CPG was \$10,417.

48. Dr. Roemer is entitled to the reasonable value of the services he performed on behalf of CPG from October 1 through October 7, 2000.

49. CPG has refused to compensate Dr. Roemer for the reasonable value of the services he performed on CPG's behalf from October 1 through October 7, 2000, despite having made a demand for the same.

WHEREFORE, Plaintiff, Paul Brian Roemer, M.D., respectfully requests that the Court enter Judgment in his favor and against Defendant in the amount of \$2,322, plus legal interest,



representing the amount due and owing for services performed in the month of October, 2000, plus reasonable attorneys' fees, costs, and such other and further relief as may be deemed appropriate.

**COUNT III**  
**TORTIOUS INTERFERENCE WITH PROSPECTIVE**  
**CONTRACTUAL RELATIONS**

50. Dr. Roemer hereby incorporates by reference the averments contained in Paragraphs 1-49 as fully as though set forth herein at length.

51. Since CPG terminated Dr. Roemer's employment on October 7, 2000, Dr. Roemer has been practicing medicine with Clearfield Adult Medicine Associates, Inc.

52. On information and belief, during the months of August and September of 2000, CPG intentionally and falsely told patients that Dr. Roemer treated while at CPG that he was leaving the Clearfield area in November altogether, and directed or attempted to direct those patients to other physicians for care.

53. Additionally, upon information and belief, CPG has and continues to refuse to release medical records belonging to individuals who were or are patients of CPG physicians and who wish to become patients of Dr. Roemer.

54. On information and belief, there is a reasonable likelihood that Dr. Roemer would have become the physician of these and numerous other individuals but for CPG's conduct.

55. CPG's above-described acts were intended to harm Dr. Roemer by preventing these individuals from becoming Dr. Roemer's patients.

56. CPG's above-described acts were not and are not privileged or justified.

57. On information and belief, Dr. Roemer has suffered loss of income as a direct and proximate result of CPG's conduct.

WHEREFORE, Plaintiff, Paul Brian Roemer, M.D., respectfully requests that the Court enter Judgment in his favor and against Defendant in an amount exceeding \$20,000, plus legal interest, attorneys' fees and costs, and such other and further relief as may be deemed appropriate.

**COUNT IV**  
**CONVERSION**

58. Dr. Roemer hereby incorporates by reference the averments contained in Paragraphs 1-57 as fully as though set forth herein at length.

59. Dr. Roemer maintained various personal effects at his office at CPG's facility, including a pulse oximeter, paintings, pictures, an aquarium and accessories, a lamp, and diploma frames.

60. Since October 7, 2000, when CPG terminated Dr. Roemer's employment and took his keys to CPG's facility, defendant has exercised unlawful control over the personal effects described above.

61. CPG has refused and continues to refuse to return these personal effects to the custody and control of Dr. Roemer.

62. CPG has no right, title or equitable claim to ownership and/or possession of said personal effects.

63. On information and belief, CPG intends to deprive Dr. Roemer of said personal effects.

WHEREFORE, Plaintiff, Paul Brian Roemer, M.D., respectfully requests that the Court enter Judgment in his favor and against Defendant for the value of the personal effects, plus legal interest, attorneys' fees and costs, and such other and further relief as may be deemed appropriate.

**COUNT V**  
**PUNITIVE DAMAGES**

64. Dr. Roemer hereby incorporates by reference the averments contained in Paragraphs 1-63 as fully as though set forth herein at length.

65. CPG, at all times relevant and material to this matter, has acted in bad faith with respect to Dr. Roemer's termination, by making incorrect representations as to his post-employment obligations, by failing to compensate him for work performed, by interfering with his prospective contractual relationships with patients who wish to receive his care, and by intending to exercise unlawful control of his personal effects, as complained of above.

66. CPG's conduct in this matter has been and continues to be wanton and outrageous.

WHEREFORE, Plaintiff, Paul Brian Roemer, M.D., respectfully requests that the Court enter judgment in his favor and against Defendant for:

- a. punitive damages;
- b. counsel fees, interest and costs to the plaintiff; and
- c. such other and further relief as may be appropriate.

JURY TRIAL DEMANDED.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire

Attorneys for Plaintiff

## Employment Contract

This contract, to be effective the 1st day of Nov., 99, by and between Clearfield Professional Group, Ltd. (C.P.G.), a Pennsylvania corporation, having its principal office at 820 Turnpike Avenue, Clearfield, PA, 16830 and Paul B. Roemer, M.D., presently of 115 West Market Street, Clearfield, PA 16830. The attached "Group Recruitment Agreement" between the Clearfield Hospital and C.P.G. is made a part of this employment contract.

C.P.G. agrees to employ Dr. Roemer under the following terms and conditions:

Dr. Roemer will be paid \$125,000 or 60% of his actual gross receipts received by C.P.G., (whichever is greater) for the first 12 month period of employment, less applicable taxes, and, when eligible, retirement funding. Following the first 12 month period, Dr. Roemer will be paid by the same mechanism as the shareholder physician members of C.P.G.

It is understood that Dr. Roemer will practice medicine full time, with full time being defined as being available on a schedule similar to the other physicians of C.P.G.

All income generated by the professional activities of Dr. Roemer shall be collected by C.P.G.

Dr. Roemer is free to leave C.P.G. at any time following the initial 12 month period as long as he provides written notice to C.P.G. 60 days prior to leaving, subject to the pay-back provisions of the attached Group Recruitment Agreement. Should Dr. Roemer leave before the end of the "Repayment/Forgiveness Period" (10-31-2005) it is understood that any payments required to the hospital will be Dr. Roemer's sole responsibility.

C.P.G. may discharge Dr. Roemer only at the end of the first 12 month period, or each succeeding 6 month period, only by written notice, given 60 days prior to discharge.

Should Dr. Roemer leave C.P.G. at any time for any reason, and practice within the service area of the Clearfield Hospital within 36 months of separation, C.P.G. will supply him with copies of medical records of any patient who signs a request for record transfer at a cost to reflect only the clerical time to reproduce the records, and, Dr. Roemer will pay C.P.G. \$1,000.00 per month for 24 months, starting 30 days after being separated from C.P.G.

Should Dr. Roemer leave C.P.G. before 36 months of employment, C.P.G. will own his receivables.

Should Dr. Roemer leave C.P.G. after 36 months of employment, he will own his receivables which C.P.G. will collect and transmit to him, less a 5% billing charge.

After 12 months, Dr. Roemer will become an equal voting shareholder in C.P.G. when the following conditions have been met:

1. \$10,000.00 of his gross receipts have been transferred to the shareholder physicians (as payment for his/her share of the assets of C.P.G.) at the rate of \$100.00 per week starting in the 13<sup>th</sup> month of employment.
2. Acceptance by a majority vote of the C.P.G. stockholders.
3. Purchase of \$3,000.00 worth of C.P.G. stock.

It is understood that the death or disability of Dr. Roemer or any circumstance that prevents him from practicing medicine full time, will immediately cancel this contract with the sole liability of C.P.G. being the payment of salary earned up to that time.

C.P.G. will provide office space, billing service, nursing and secretarial personnel, and the usual supplies required to practice medicine.

The cost of license, dues for professional organizations, continuing education, journals and other incidentals subject to the personal preferences of Dr. Roemer, shall be deducted from his salary during the first 12 months, and thereafter handled in the same fashion as similar expenses for the shareholder physicians of C.P.G.

Dr. Roemer will be entitled to 2 weeks vacation and one week off for continuing education during the first 12 months.

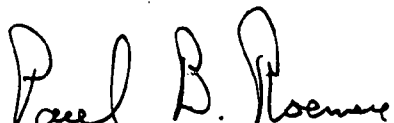
Clearfield Hospital will be paying malpractice insurance for the first year. C.P.G. will pay health insurance premiums for the first 12 month period. Malpractice and health insurance premiums for the period following the first 12 months will be charged to Dr. Roemer (in the same fashion as for the other physician members of C.P.G.) even if that payment must be made prior to the end of the first 12 months.

Dr. Roemer shall indemnify CPG from and against any liabilities, costs, damages or other losses caused by Dr. Roemer's performing or failing to perform any duties, including but not limited to third party

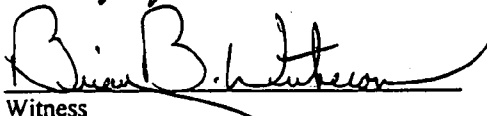
payor refund claims for fraudulent, negligent or otherwise illegal or improper billing and including claims involving professional services. Notwithstanding the above, Dr. Roemer shall not be required to indemnify CPG if such indemnification is precluded by an affected malpractice insurance carrier or interpreted or construed by such malpractice carrier to increase the malpractice liability exposure of any insurer providing coverage to CPG or Dr. Roemer. To the extent that such liabilities, costs, damages or other losses are covered or compensated by insurance purchased by CPG, Dr. Roemer shall not be obligated to CPG hereunder; but shall be subject to such subrogation rights as provided in those insurance policies.

This contract is contingent upon Dr. Roemer maintaining a Pennsylvania license, malpractice insurance and privileges at Clearfield Hospital.


Intending to be legally bound by this contract, the parties sign below.

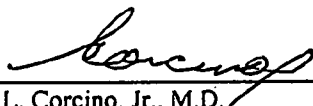
  
Paul B. Roemer, M.D.

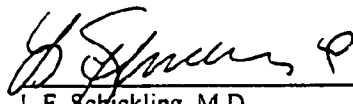
Date: 10/26/99

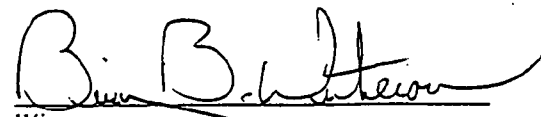
  
Witness

Date: 10/26/99

  
R.A. Johnson, D.O.  
President  
Date: 10/26/99

  
B.L. Corcino, Jr., M.D.  
Treasurer  
Date: 10/26/99

  
L.F. Schickling, M.D.  
Secretary  
Date: 10-26-99

  
Witness  
Date: 10/26/99

# **GROUP RECRUITMENT AGREEMENT**

## **BY AND BETWEEN**

**CLEARFIELD HOSPITAL**, a nonprofit corporation, organized under the laws of Pennsylvania (hereinafter called "the Hospital")

A  
N  
D

**CLEARFIELD PROFESSIONAL GROUP, LTD.**, a professional corporation organized under the laws of the Commonwealth of Pennsylvania (hereinafter called "the Group")

## **WITNESSETH:**

WHEREAS, the Hospital is organized for the charitable purpose of the promotion of health; and

WHEREAS, in furtherance of this purpose, the Hospital desires to encourage physicians in needed specialties to establish their practices in the community primarily served by it ("the Service Area"); and

WHEREAS, the Hospital has determined that there is a need for the services of certain medical specialties in the Service Area including Internal Medicine; and

WHEREAS, **PAUL B. ROEMER, MD** is licensed to practice medicine in the Commonwealth of Pennsylvania and has not previously practiced in the Service Area or been affiliated with another hospital in the Service Area; and

WHEREAS, Dr. Roemer desires to specialize in the practice of Internal Medicine in the Service Area; and

WHEREAS, the Hospital has determined that it is in the best interests of the people in said Service Area to provide an income guarantee and other financial incentives sufficient to induce the Dr. Roemer to relocate to the Service Area and permit Dr. Roemer to establish a full-time practice of Internal Medicine in the Service Area; and

WHEREAS, Dr. Roemer intends to practice as an employee of the Group; and

WHEREAS, the Hospital has also determined that if Dr. Roemer chooses to practice with the Group, as opposed to practicing on a solo basis, the Hospital will be better able to achieve its goal of promoting the health of the people in the Service Area by virtue of the cross-coverage and internal peer review that are inherent in group practice.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, and intending to be legally bound hereby, the parties hereto agree as follows:

## **Section 1. Definitions**

For purposes of this Agreement:

- (a) "Net Practice Income" shall mean all fees collected by the Group on a cash basis for all medical services rendered by Dr. Roemer in the course of his practice during the Guarantee Period, whether billed under the Dr. Roemer's name or not, less Office Expenses of forty percent (40%) of gross cash receipts.
- (b) "Starting Date" shall mean on or about November 1, 1999, provided that the following has occurred: (i) Dr. Roemer has been appointed to the Hospital's active medical staff; (ii) Dr. Roemer has submitted an application for provider numbers and the Group's office has been staffed, equipped and open to see patients; and (iii) at least one advertisement has been run in the local newspaper announcing that Dr. Roemer's office is open and he is accepting patients.
- (c) "Guarantee Period" shall mean the 12 month period commencing on the Starting Date and continuing for a period of 12 months until October 31, 2000.
- (d) "Repayment/Forgiveness Period" shall mean the period commencing on November 1, 2000 and continuing for a period of five years until October 31, 2005.
- (e) "Equipment" shall mean (i) standard equipment needed in the office such as files, typewriters, duplicating equipment, desks, chairs, etc., and (ii) medical equipment reasonably sufficient for the practice of Dr. Roemer's specialty.
- (f) The "Equipment", both medical and office, required for Dr. Roemer to practice medicine is already owned by the Group. It is anticipated that no new equipment will be needed.
- (g) "Office Expenses" shall be accepted as forty percent (40%) of gross cash receipts and shall cover all of the usual expenses of practicing medicine during the guarantee period except malpractice insurance and the cost of books, journals, and continuing medical education.
- (h) "Service Area" shall mean primary and secondary areas of patients serviced by the Hospital as determined in maps.

## **Section 2. Financial Guarantee**

The Hospital guarantees to the Group that the Group will, during each month of the one-year Guarantee Period, receive Net Practice Income for Dr. Roemer of Ten Thousand Four Hundred, Sixteen Dollars and Sixty-Seven Cents (\$10,416.67) [\$125,000.00 annually] (the "Guarantee"). For each calendar month, beginning with the month in which the Starting Date occurs, that Net Practice Income for such month is less than the Guarantee, the Hospital shall advance to the Group the difference between the Guarantee and the amount of Net Practice Income received by the Group for Dr. Roemer during that month. The Group and Dr. Roemer shall make all the financial information deemed necessary by the Hospital to make such calculation available to the Hospital as soon as possible after the end of each month



during the Guarantee Period. The Hospital agrees to make any required advance within 15 days of receipt of such information.

### **Section 3. Signing Bonus**

In addition to the Guarantee, the Hospital shall directly award Dr. Roemer a sign-on bonus of Six Thousand and Two Hundred Dollars (\$6,200.00) due and payable immediately upon signing of this Agreement.

### **Section 4. Educational Loan Forgiveness**

The Hospital shall directly award Dr. Roemer with educational loan forgiveness in the amount of Ten Thousand Dollars (\$10,000.00) per year for ten (10) years. Payment will be awarded at the end of each one-year of service to the Clearfield area providing the Dr. Roemer produces receipt for same. Payment will be made within thirty (30) days after the end of each one-year period of practice within the Clearfield Service Area. Dr. Roemer shall not use these funds for any purpose other than to retire his educational loan obligations. If Dr. Roemer were to join with a competing healthcare facility or group during this ten-year period, then the Hospital has the right to repayment of all monies paid under this Section and all other features of this Agreement automatically terminate. If Dr. Roemer ceases to be an active member of Clearfield Hospital's Medical Staff for any reason, then all future payments are terminated.

### **Section 5. Financial Obligation of the Physician**

- (a) If, in any month during the Guarantee Period, Net Practice Income exceeds the Guarantee, the Hospital will make no payment to the Group.
- (b) During the Guarantee Period, the Group and Dr. Roemer will make a good faith effort to collect all accounts receivable, and hereby grants to the Hospital a security interest in said accounts receivable in an amount equal to the unrepaid balance of the amounts advanced to the Group under the Guarantee. Dr. Roemer shall execute such documents as the Hospital determines may be necessary to perfect that security interest.
- (c) The Group shall execute a Promissory Note at the end of the Guarantee Period evidencing the obligation to repay any amounts advanced under the Guarantee that have not been repaid as of the expiration or termination of the Guarantee Period. Provided, however, that for each month during the Repayment/Forgiveness Period that Dr. Roemer maintains a full-time practice in the Service Area and continues to fulfill the Community Service Obligations set forth in the Agreement, the Hospital shall forgive the amount owed to it in the next monthly installment due under the Promissory Note and each month release Dr. Roemer and the Group from any repayment obligation for that installment. If Dr. Roemer ceases to comply with any provision of this Agreement prior to the end of the Repayment/Forgiveness Period, the remaining payments still due and owing to the Hospital shall not be forgiven and shall be repaid in accordance with Section 5(d).

- (d) The terms of the Promissory Note shall include language as follows:  
For value received, and intending to be legally bound, the Group promises to pay to the order of the Hospital the principal sum equal to the total amount advanced to the Group by the Hospital but not repaid to the Hospital pursuant to the Agreement between the Group and the Hospital, the Starting Day of which is November 1, 2000, plus all interest due thereon, as said amount is reflected on the books of the Hospital. The Hospital shall give written notice to the Group of the amount so owed as of the date of expiration or termination of the Guarantee Period. Terms used in the Note shall have the same meanings as set forth in this Agreement. Principal and interest shall be paid in sixty (60) equal monthly installments beginning on the first day of the Repayment/Forgiveness Period and on the first day of each subsequent month thereafter, subject to forgiveness provisions contained in this Agreement. Interest shall begin to accrue on November 1, 2000. The rate of said interest shall be the prime interest rate plus one percentage point (1%) as reported in the last edition of the Wall Street Journal published and shall remain at said rate for the term of the Promissory Note. Said interest shall be due and payable along with the principal. A schedule of installment payments actually due shall be prepared by the Hospital and transmitted to the Group on or before the date that the first payment is due. After maturity, interest shall accrue at the interest rate specified above until all sums due hereunder are paid. So long as the Hospital is the holder hereof, the Hospital's book and records shall evidence at all times all amounts outstanding under the Note and the date and amount of each advance and payment made pursuant hereto. This prompt and faithful performance of all of the Group's obligations hereunder, including, without limitation, time of payment, shall be of the essence of the Promissory Note.
- (e) The Group hereby warrants that neither the Group nor Dr. Roemer has ever declared bankruptcy. Dr. Roemer and the Group shall not use this Agreement or the amounts due hereunder as collateral for any other debt, loan or obligation without the prior written consent of the Hospital. Creditors of Dr. Roemer and the Group shall not have recourse against the Hospital with respect to any debt, loan or obligation of Dr. Roemer or the Group.
- (f) The financial terms of this Agreement, including the amounts of any and all advances and reimbursements to the Group, shall be strictly confidential. The Group and Dr. Roemer shall not discuss the financial terms of this Agreement with or otherwise disclose or communicate its contents to any person or entity other than their attorneys, financial advisors or accountants without the express written consent of the Hospital, unless compelled by subpoena or other legal process.

#### **Section 6. Relocation Expenses**

Dr. Roemer shall be responsible for his own relocation expenses.

## **Section 7. Professional Liability Insurance**

During the guarantee period, the Hospital shall provide Dr. Roemer with professional liability insurance with tail coverage with basic limits in the amounts of \$900,000/\$300,000 with excess coverage in at least the limits available through the Pennsylvania Catastrophe Fund, but otherwise as required of all members of the Hospital's Medical Staff. The Group or Dr. Roemer shall be responsible for insurance after the guarantee period.

## **Section 8. Reporting of Payments**

The Hospital shall report to the Internal Revenue Service and to such state and local taxing authorities as may be applicable, any income realized by the Physician pursuant to this Agreement as required by law, pursuant to IRS Form 1099 or similar forms used for such purposes.

## **Section 9. No Requirement to Make Referrals**

- (a) There is no requirement that Dr. Roemer or the Group make referrals to, be in a position to make referrals to, or otherwise generate business for the Hospital as a condition of receiving the benefits hereunder.
- (b) The Group shall not restrict or prohibit from establishing staff privileges at, referring any service to, or otherwise generating any business for any entity besides the Hospital of Dr. Roemer's choosing.
- (c) The amount or value of the recruitment benefits provided by the Hospital hereunder shall not vary (or be adjusted or renegotiated) based on the volume or value of any expected referrals to, or business otherwise generated for, the Hospital or its affiliates.

## **Section 10. Community Service Obligations of the Physician**

In order to carry out the purpose of this Agreement, which is to make needed medical services more readily available to the people within the Service Area, the Group shall require Dr. Roemer to comply with the following Community Service Obligations:

- (a) Dr. Roemer shall:
  - (i) Meet and continue to meet the criteria for active medical staff appointment as set forth in the Hospital's Medical Staff Bylaws;
  - (ii) Apply for and maintain clinical privileges to practice Internal Medicine commensurate with the procedures that he shall be performing at the Hospital

- (iii) Comply with the Bylaws, Rules and Regulations, Policies and Procedures of the Hospital and its medical staff;
- (iv) Exercise that standard of skill, diligence, and regularity as generally applicable to the practice of Internal Medicine in the Service Area;
- (v) Obtain and/or maintain a license to practice medicine in Pennsylvania and current unrestricted narcotics registration from the DEA; and
- (vi) Obtain and/or maintain board certification in Internal Medicine.

In the event that Dr. Roemer fails to meet any of the above requirements, this Agreement shall automatically terminate.

- (b) The Group is an independent contractor and shall conduct its independent practice of Internal Medicine in the Service Area. However, in order to fulfill the community need for which Dr. Roemer was recruited to the Service Area, during the Term of this Agreement the Group shall require Dr. Roemer to provide patient services within the Service Area of the Hospital on a full-time (40 hour-per-week) basis. The Group will also limit Dr. Roemer's vacation and educational leave time to two weeks of vacation time annually and one week of continuing medical education time.
- (c) In order to assure adequate access to care by patients in the Hospital's Service Area, Dr. Roemer shall execute such agreements as may be necessary to become, and shall remain, a participating provider in the federal Medicare program, the Pennsylvania Medicaid program. Dr. Roemer shall also participate in the Hospital's call roster and shall treat any patients referred or assigned pursuant to the Hospital's Emergency Department or service on-call rosters, regardless of the insurance status of such patients or their ability to pay. In the event that Dr. Roemer's participation in Medicare or Medicaid terminates for any reason or he is otherwise excluded or precluded from participation in either of those programs, this Agreement shall automatically terminate.

#### **Section 11. Independent Contractor**

In the performance of all obligations hereunder, the Group and Dr. Roemer shall be deemed to be independent contractors and not employees of the Hospital and the Hospital shall not withhold, or in any way be responsible for, the payment of any federal, state or any local income or wage taxes, F.I.C.A. taxes, unemployment compensation, or workers' compensation contributions, vacation pay, sick leave, retirement benefits, or any other payments for or on their behalf. The Group shall indemnify and hold the Hospital harmless from any and all loss or liability arising with respect to such payments, withholdings, and benefits.

#### **Section 12. Billing for Professional Services**

- (a) Billing for professional services rendered by Dr. Roemer shall be the responsibility of the Group.

- (b) During the Guarantee Period and period of forgiveness thereafter, the Hospital reserves the right to retain its own accountant to verify the billings, receipts, revenues and expenses attributable to Dr. Roemer's practice and such other information necessary to effectuate the terms of this Agreement, and Dr. Roemer and the Group shall permit the Hospital and its designated accountant to have access to this information.

### **Section 13. Termination**

- (a) This Agreement shall expire at the end of the Term of this Agreement, provided, however, Dr. Roemer's obligations described in Section 5 of this Agreement shall not be affected by the termination or expiration of this Agreement.
- (b) The Hospital and the Group shall each have the right to terminate this Agreement by giving written notice to the other party of material breach of any term(s) of this Agreement (effective on the date stated in the notice which must be at least 45 days after its receipt by the party in material breach) if the party in material breach fails to cure the material breach(es) prior to the termination date stated in said notice.
- (c) In the event that (i) the Hospital terminates this Agreement due to material breach by the Group or Dr. Roemer, (ii) the Group or Dr. Roemer terminates this Agreement for a reason other than those specified in Section 10(a), 10(b), or 10(c) the Agreement automatically terminates, then the entire amount advanced pursuant to Section 2 of this Agreement, plus all applicable interest, less any repayments made by the Group, less any forgiveness prior to the effective date of said termination, shall be repaid to the Hospital by the Group in accordance with Section 5 (c) and (d).
- (d) In the event of Dr. Roemer's death, disability, or any other circumstance that prevents Dr. Roemer from practicing medicine full-time, the Agreement shall automatically terminate.
- (e) In the event:
- (i) of the termination of this Agreement pursuant to this Section;
  - (ii) of the termination of this Agreement due to the Hospital's material breach of this Agreement; or
  - (iii) the Group or Dr. Roemer cannot perform the covenants of this Agreement due to unforeseen circumstances beyond the Group's or Dr. Roemer's control, as judged solely by the Hospital,

The Group shall repay the entire amount advanced pursuant to Section 2 of this Agreement, plus all applicable interest, less any repayments made by the Group, less any forgiveness prior to the effective date of said termination pursuant to Section 5 (c).

- (f) This Agreement and all of its terms and conditions shall terminate automatically in the event the Group repays all of the advances made by the Hospital pursuant to Section 2 of this Agreement, plus any applicable interest.

#### **Section 14. Compliance with Law**

- (a) The parties shall comply with all applicable statutes, rules, regulations and standards of any and all governmental authorities and regulatory and accreditation bodies.
- (b) The forgiveness provisions and other benefits provided hereunder shall only be effective to the extent not prohibited by law and to the extent they do not adversely affect the Hospital's tax-exempt status
- (c) In the event the Hospital determines that this Agreement is illegal or inconsistent with the Hospital's tax-exempt status, the forgiveness provision shall have no force and effect and the full amount of the outstanding balance shall be repaid to the Hospital in accordance with Section 5 (c).

#### **Section 15. Jurisdiction**

This Agreement shall be construed and enforced under, and in accordance with, the laws of Pennsylvania.

#### **Section 16. Assignment**

This Agreement may not be assigned by either party, without the express written consent of the other.

#### **Section 17. Amendments**

This Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be operative or valid it shall have been reduced to writing and signed by both parties.

#### **Section 18. Medicare Access to Books and Records**

In the event, and only in the event, that Section 952 of P.L. 96-499 (42 U.S.C. Section 1395x(v)(1)(1)) is applicable to this Agreement, the Group agrees as follows:

- (a) Until the expiration of four years after the furnishing of such services pursuant to this Agreement, the Group shall make available, upon written request from the Secretary of the federal Department of Health and Human Services or upon request from the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, any of the Group's books, documents and records that are necessary to certify the nature and extent of the cost of services provided pursuant to this Agreement; and
- (b) If the Group carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary of the federal Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, any books, documents and records of such organization that are necessary to verify the nature and extent of the cost of services provided pursuant to said subcontract.

#### **Section 19. Medical Record Documentation**

Every practitioner on the Medical Staff of Clearfield Hospital is responsible for completion of all of his/her medical record documentation prior to leaving the Medical Staff with the exclusion of an emergency situation. Failure to do so is considered a direct violation of the Medical Staff Bylaws of Clearfield Hospital, which is reportable to the National Practitioners Data Bank.

#### **Section 20. Strict Performance**

No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and Term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

#### **Section 21. Entire Agreement**

There are no other agreements or understandings, either oral or written, between the parties affecting this Agreement, except as otherwise specifically provided for or referred to herein. This Agreement cancels and supersedes all previous agreements between the parties relating to the subject matter covered by this Agreement.

**Section 22. Invalidity or Unenforceability of Particular Provisions**

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**Section 23. Compliance Programs**

The Group and Dr. Roemer shall cooperate with any and all corporate compliance programs now or hereafter instituted by the Hospital.


**Section 24. Relationship of Parties**

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture, or any association between the parties.

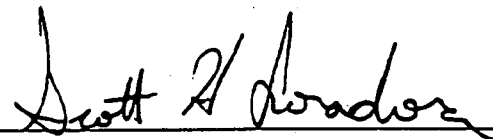
IN WITNESS WHEREOF, the parties have caused this Agreement to become effective the day and year first written above.

**SIGNED**

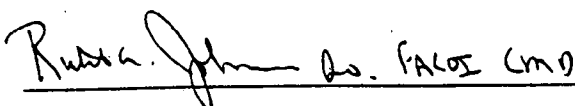
**CLEARFIELD HOSPITAL**

  
\_\_\_\_\_  
Kent C. Hess, President and CEO

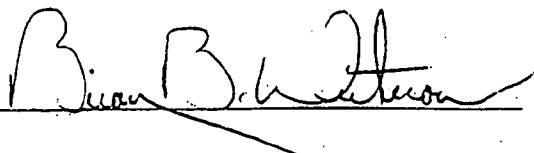
Date: 26 OCT 99

Witness:   
\_\_\_\_\_

**CLEARFIELD PROFESSIONAL GROUP, LTD.**

  
\_\_\_\_\_  
Russel Johnson, D.O., FACS, CMD

Date: October 26, 1999

Witness:   
\_\_\_\_\_



**VERIFICATION**

I, Paul Brian Roemer, M.D., state that I am the Plaintiff in the aforementioned action, and that the facts set forth in the foregoing COMPLAINT are true and correct based upon my personal knowledge or upon my information and belief; and I make this statement subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATED: January 15, 2001

A handwritten signature in cursive script that reads "Paul B. Roemer". The signature is written in dark ink and is positioned above a horizontal line.

Paul Brian Roemer, M.D.  
Plaintiff

FILED

JAN 16 2001  
M111551  
William A. Shaw  
Prothonotary

att'y mettle

pd \$80.00

1cc Sherry D

1cc att'y mettle

 COPY

September 21, 2005

Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

Re: Paul Brian Roemer, MD  
Vs.  
Clearfield Professional Group, LTD  
No. 01-74-CD and 01-87-CD  
Superior Court No. 1420 WDA 2005

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed two items under separate cover.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

 COPY

John K. Reilly, Jr., S.J., Specially Presiding    Jason Mettley  
Court of Common Pleas    219 Fort Pitt Boulevard  
230 E. Market Street    Pittsburgh, PA 15222  
Clearfield, PA 16830

William Stang    Carl J. Rychcik  
Dominion Tower, 29th Floor    625 Liberty Ave.  
625 Liberty Ave.    29th Floor  
Pittsburgh, PA 15222    Pittsburgh, PA 15222

John Sughrue  
23 North Second Street  
Clearfield, PA 16830

Paul Brian Roemer, MD  
Vs.  
Clearfield Professional Group, LTD

Court No. 01-74-CD and 01-87-CD; Superior Court No. 1420 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on September 21, 2005.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

## Civil Other

Date		Judge
01/16/2001	Filing: Civil Complaint Paid by: Jason Mettley, Esquire Receipt number: 1816734 Dated: 01/16/2001 Amount: \$80.00 (Check) One Certified Copy to Sheriff One Certified Copy to Attorney Mettley	No Judge
01/23/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Costs: \$29.00	No Judge
02/20/2001	Preliminary Objections to Complaint, Filed by s/William L. Stang, Esq. Susan Brahm Gunn, Esq. Cert of Service no cc	No Judge
05/30/2001	Defendant's Withdrawal of Preliminary Objections to Complaint, filed by s/Susan Brahm Gunn, Esq. No CC	John K. Reilly Jr.
07/02/2001	Answer and New Matter of Clearfield Professional Group, Ltd. filed by s/Susan Brahm Gunn, Esq. 1 cc to atty	John K. Reilly Jr.
07/19/2001	Reply to New Matter. Filed by s/Jason Mettley, Esq. Cert of Svc 1 cc atty Mettley	John K. Reilly Jr.
10/11/2001	Stipulated Motion to Consolidate, filed by s/Jason Mettley, Esq. s/Susan Brahm Gunn, Esq. No CC Cases to be consolidated to 01-74-CD, 01-87-CD	John K. Reilly Jr.
10/15/2001	ORDER, filed 2 Cert. to Atty Gunn AND NOW, this 15th day of October, 2001, IT IS ORDERED, that the motion be, and the same hereby is, GRANTED.	John K. Reilly Jr.
07/31/2003	Praecipe for a Trial Date, filed by Atty. Gunn copy to C/A	John K. Reilly Jr.
08/01/2003	Motion For Summary Judgment In Part And In Whole Of Paul B. Roemer, M.D. filed by s/Jason Mettley, Esquire Certificate of Service 2 cc Atty Mettley	John K. Reilly Jr.
09/26/2003	Defendant's Cross Motion for Summary Judgment filed by Atty. Gunn. 1 CC to Atty.	John K. Reilly Jr.
10/02/2003	Appendix to Plaintiff's Motions for Summary Judgment, filed by Atty. Mettley No Cert. Copies (Also filed to 2001-87-CD)	John K. Reilly Jr.
12/16/2003	OPINION AND ORDER, NOW, this 16th day of December, 2003, re; Motions shall be and are hereby GRANTED in part and DISMISSED in part in accordance w/foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Attys: Kabala, Gunn, Mettley, and Stand	John K. Reilly Jr.
01/02/2004	Defendant's Motion For Continuance Of Trial To Spring Term. filed by, s/Sue Gunn, Esquire Stipulation of Counsel s/Jason Mettley, Esq. Certificate of Service no cc	John K. Reilly Jr.
01/09/2004	ORDER, NOW, this 7th day of January, 2004, re: Defendant's Motion for Continuance of Trial to Spring Term is DENIED. by the Court, s/FJA,P.J. 1 cc Atty Gunn	John K. Reilly Jr.
01/15/2004	ORDER, NOW, this 15th day of January, 2004, re: above-captioned matter shall be removed from the current list for jury trials and scheduled by the CA for trial w/o jury at the convenience of the parties. Pretrial conference scheduled for Jan. 15, 2004, shall be and is hereby CANCELLED. by the Court, s/JKR,JR., Senior Judge, Specially Presiding copies mailed to: Jason Mettley, Esq., Wm Stang, Esq and Carl Rychcik, Esq.	John K. Reilly Jr.
02/11/2004	Praecipe For Entry Of Appearance On Behalf Of Clearfield Professional Group, Ltd. filed by, s/Carl J. Rychcik, Esq. Certificate of Service no cc Copy to C/A	John K. Reilly Jr.
02/19/2004	Petition For Permission to File Amendment To Complaint and Request For Rule To Show Cause. filed by, s/ William L. Stang, Esq. 1 cc Atty	John K. Reilly Jr.

## Civil Other

Date		Judge
02/19/2004	ORDER, AND NOW, to wit: this 19th day of February, 2004, Rule issued upon PAUL BRIAN ROEMER, M.D. Rule Returnable on the 8th day of March, 2004, for filing Written Response. by the Court, s/FJA, P.J. 1 cc to Atty	John K. Reilly Jr.
02/20/2004	Affidavit of Service, Order/Rule to Show Cause dated 19th day of February, 2004 and Petition/Motion for Permission to Amend Complaint filed 19th day of February, 2004 to be served on Plaintiff/Defendant Paul Brian Roemer, M.D. through JasonMettley, Esq. filed by, s/John Sughrue, Esquire Certificate of Service 3 cc to Atty	John K. Reilly Jr.
03/08/2004	Answer To Petition For Permission to File Amendment to Complaint. filed by, s/Jason Mettley, Esquire Verification s/Paul Brian Roemer, M.D. Certificate of Service 1 cc to Atty	John K. Reilly Jr.
03/11/2004	ORDER filed. AND NOW, this 10th day of March, 2004, it is the ORDER of the Court that argument on atty. Stang's Petition has been scheduled for March 24, 2004 before Judge Reilly. s/FJA 1CC to Atty. Stang, 1 CC to Atty. Mettley.	John K. Reilly Jr.
03/16/2004	Praeipce For Appearance on behalf of Clearfield Professional Group, LTD. s filed by, s/ John Sughrue, Esquire 3 cc Atty Sughrue	John K. Reilly Jr.
03/24/2004	ORDER, NOW, this 24th day of March, 2004, re: Petition for Permission to File Amendment to Complaint filed on behalf of Clearfield Professional Group, Ltd. is GRANTED. Clearfield Professional Group, Ltd. is directed to file said amended complaint forthwith. by the Court, s/JKR, JR., S.J., Specially Presiding cc to Attys, Mettley, Stang & Sughrue	John K. Reilly Jr.
03/26/2004	Amendment to Complaint. filed by, s/Carl J. Rychcik, Esquire Certificate of Service 1 cc to Atty	John K. Reilly Jr.
04/27/2004	ORDER, AND NOW, this 26th day of April, 2004, re: Civil Non-Jury Trial scheduled for Wed., July 14, 2004 and Thur., July 15, 2004 at 9:00 a.m. each day before Senior Judge Reilly. by the Court, s/FJA, P.J. 1 cc Attys Mettley, Rychcik and Sughrue	John K. Reilly Jr.
05/17/2004	Answer To Amendment to Complaint. filed by, s/Jason Mettley, Esquire Certificate of Service Verification s/Paul B. Roemer, M.D. no cc	John K. Reilly Jr.
06/24/2004	Notice to Attend, filed by Atty. Stang no cert. copy filed to 01-87-CD	John K. Reilly Jr.
07/15/2004	ORDER, filed. cert. to Atty's Mettley, Starg & Rychcik Now, this 14th day of July, 2004, RE: Findings of Fact and conclusions of law.	John K. Reilly Jr.
09/16/2004	Transcript of Proceedings with Exhibits, Civil Non-Jury Trial held before Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, July 14, 2004, filed.	John K. Reilly Jr.
09/29/2004	Certificate of Service of Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, M.D. was served upon counsel for the Defendant. No cc.	John K. Reilly Jr.
	Certificate of Service Defendant's Proposed Findings of Fact and Conclusions of Law filed by Atty. Rychcik	John K. Reilly Jr.
	Certificate of Service Defendant's Trial Brief was served upon Jason Mettley, Esq. filed by Carl J. Rychcik	John K. Reilly Jr.
12/09/2004	Finding of Fact, filed. Cert. to Atty's Mettley, Stang & Rychcik Order, Now, this 9th day of December, 2004, Partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.	John K. Reilly Jr.
12/20/2004	Plaintiff's Motion for Post-Trial Relief, filed by Atty. Mettley 1 Cert. to Atty.	John K. Reilly Jr.
12/30/2004	Clearfield Professional Group's Response To Roemer's Motion For Post-Trial Relief, filed by s/ William L. Stang, Esquire. No CC	John K. Reilly Jr.

Date: 09/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:22 AM

ROA Report

Page 3 of 3

Case: 2001-00074-CD

Current Judge: John K. Reilly Jr.

Paul Brian Roemer M.D vs. Clearfield Professional Group, LTD

Civil Other

Date		Judge
02/03/2005	Order, AND NOW, this 3rd day of February, 2005, Order that argument on Plaintiff's Motion for Post-Trial Relief has been scheduled for March 31, 2005, at 10:00 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding BY THE COURT: /s/John K. Reilly, Jr., S.J., Sp. Pres. One CC Attys: Mettley, Stang, Sughrue	John K. Reilly Jr.
03/22/2005	Order, AND NOW, this 22nd day of March, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief scheduled for March 31, 2005 at 10:00 a.m. is Continued. BY THE COURT: Fredric J. Ammerman, President Judge. 1CC Attys: Rychek, Mettley.	John K. Reilly Jr.
05/20/2005	Order, AND NOW, this 20th day of May, 2005, it is the ORDER of the Court that argument on plaintiff's Motion for Post-Trial Relief has been scheduled for Thursday, May 26, 2005 at 9:00 a.m. in Courtroom No. 521, Allegheny County Courthouse, 436 Grant Street, Pittsburgh PA, before the Honorable Judge John K. Reilly. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC to C/A for Service	Fredric Joseph Ammerman
07/08/2005	Order, this 8th day of July, 2005, Plaintiff's Motion for Post Trial Relief is hereby dismissed in accordance with the Findings of Fact, Conclusions of Law and Opinion filed by this Court on December 9, 2004. By The Court, /s/ John K. Reilly, Jr., Senior Judge. CC to Atty j. Mettley, W. Stang, Rychick, Sughrue	John K. Reilly Jr.
07/14/2005	Filing: Praeipe For Entry of Judgment on Decision in Non Jury Trial Paid by: Rychcik, Carl J. (attorney for Clearfield Professional Group, LTD) Receipt number: 1904790 Dated: 07/14/2005 Amount: \$20.00 (Check) Judgment in favor of Clearfield Professional Group, Ltd. and against Paul Brian Roemer in the amount of \$75,580.25. filed by s/Carl J. Rychcik, Esquire. 1CC & Notice to Atty. Mettley, Statement to Atty Rychcik	John K. Reilly Jr.
08/05/2005	Notice of Appeal, filed by s/Jason Mettley, Esq. One CC to Atty, One CC Superior Court with check for \$60.00	John K. Reilly Jr.
08/08/2005	Praeipe for Deposit of Security to Stay Execution, filed by s/Jason Mettley, Esq. One CC Atty	John K. Reilly Jr.
08/18/2005	Superior Court Appeal Docket Sheet, Docket Number 1420 WDA 2005, filed. No CC	John K. Reilly Jr.
09/21/2005	Case mailed to Superior Court, September 21, 2005.	John K. Reilly Jr.

Date: 09/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:42 AM

ROA Report

Page 1 of 3

Case: 2001-00087-CD

Current Judge: John K. Reilly Jr.

Clearfield Professional Group, LTD vs. Paul B Roemer MD

Civil Other

Date		Judge
01/17/2001	Filing: Civil Complaint Paid by: Edward Kabala, Esq. Receipt number: 1816853 Dated: 01/17/2001 Amount: \$80.00 (Check) Two Certified Copies to Sheriff Two Certified Copies to Attorney	No Judge
01/29/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/22/2001	Answer and New Matter of Paul B. Roemer, M.D. Filed by s/Jason Mettley, Esq. Verification, s/LPaul Brian Roemer, M.D. Certificate of Service no cc	No Judge
03/12/2001	Reply to New Matter filed on behalf of Plff. No cc.	John K. Reilly Jr.
10/11/2001	Stipulated Motion to Consolidate (Original filed to 01-74-CD), filed. s/Jason Mettley, Esq. s/Susan Brahm Gunn, Esq.	John K. Reilly Jr.
10/15/2001	ORDER, filed. (Original filed to case # 2001-74-CD) 2 Cert. to Atty. Gunn AND NOW, this 15th day of October, 2001, the parties having filed a Stipulated Motion to Consolidate, IT IS ORDERED, that the motion be and the same hereby is, GRANTED. Case Consolidated with 01-74-CD	John K. Reilly Jr.
08/01/2003	Motion For Summary Judgment In Part And In Whole Of Paul B. Roemer, M.D. filed by s/Jason Mettley, Esquire Certificate of Service (Original Filed to 01-74-CD)	John K. Reilly Jr.
10/02/2003	Appendix to Plaintiff's Motions for Summary Judgment, filed by Atty. Mettley (copy of cover sheet in file, Original with case 2001-74-CD)	John K. Reilly Jr.
12/16/2003	OPINION AND ORDER, AND NOW, this 16th day of December, 2003, re: Motions shall be and are hereby GRANTED in part and DISMISSED in part in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J.	John K. Reilly Jr.
01/02/2004	Defendant's Motion For Continuance Of Trial To Spring Term. filed by, s/Sue Gunn, Esq. Stipulation of Counsel s/Jason Mettley, Esq. Certificate of Service no cc	John K. Reilly Jr.
01/09/2004	ORDER, NOW, this 7th day of January, 2004, it is hereby Ordered that Defendant's Motion for Continuance of Trial to Spring Term is DENIED. by the Court, s/FJA,P.J. 1 cc Atty Gunn	John K. Reilly Jr.
01/15/2004	ORDER, NOW, this 15th day of January, 2004, re: Above-captioned matter shall be removed from the current list for jury trials and scheduled by the CA for trial w/o jury at the convenience of the parties. Pretrial conference scheduled for January 15, 2004, shall be and is hereby CANCELLED. by the Court, s/JKR,JR., Senior Judge, Specially Presiding. copies mailed to: Jason Mettley, Esq., Wm. Stang, Esq., and Carl Rychcik, Esq.	John K. Reilly Jr.
02/11/2004	Praeipce For Entry Of Appearance On Behalf Of Clearfield Professional Group, Ltd. filed by, s/Carl J. Rychcik, Esq. Certificate of Service	John K. Reilly Jr.
02/19/2004	Petition For Permissson To File Amendment To Complaint and Request For Rule To Show Cause. filed by, s/William L. Stang, Esq.	John K. Reilly Jr.
	ORDER, AND NOW, to wit: this 19th day of February, 2004, Rule issued upon PAUL BRIAN ROEMER, M.D. Rule Returnable on the 8th day of March, 2004, for filing Written Response. by the Court, s/FJA, P.J. 1 cc to Atty	John K. Reilly Jr.
02/20/2004	Affidavit of Service, Order/Rule to Show Cause dated 19th day of February, 2004 and Petition/Motion for Permission to Amend Complaint filed 19th day of February, 2004, to be served on Plaintiff/Defendant Paul Brian Poemer, M.D. through Jason Mettley, Esq. filed by, s/John Sughrue, Esquire Certificate of Service 3 cc to Atty	John K. Reilly Jr.



Date: 09/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:42 AM

ROA Report

Page 2 of 3

Case: 2001-00087-CD

Current Judge: John K. Reilly Jr.

Clearfield Professional Group, LTD vs. Paul B Roemer MD

Civil Other

Date		Judge
03/08/2004	Answer To Petition For Permission To File Amendment To Complaint. filed by, s/Jason Mettley, Esquire Verification s/Paul Brian Roemer, M.D. Certificate of Service 1 cc to Attys	John K. Reilly Jr.
03/11/2004	ORDER filed. AND NOW, this 10th day of March, 2004 it is the Order of the Court that argument on Atty. Stang's Petition has been scheduled for March 24, 2004 before Judge Reilly. s/FJA 1 CC to Atty. Stang. 1 CC to Atty. Mettley.	John K. Reilly Jr.
03/16/2004	Praecipe For Appearance, on behalf of Clearfield Professional Group, LTD, Plaintiff. filed by s/John Sughrue, Esq. 3 cc Atty Sughrue 3 cc Atty Sughrue	John K. Reilly Jr.
03/24/2004	Order, NOW, this 24th day of March, 2004, upon consideration of Petition for Permission to File Amendment to Complaint filed on behalf of Clearfield Professional Group, Ltd., and argument thereon, it is the Order of this Court that said Petition be and is hereby granted and Clearfield Professional Group, Ltd., directed to file said amended complaint forthwith. BY THE COURT: /s/John K. Reilly, Jr., Senior Judge, Specially Presiding CC to Attys Mettley, Stang, and Sughrue	John K. Reilly Jr.
03/26/2004	Amendment To Complaint. filed by, s/Carl J. Rychcik, Esq. 1 cc to Atty	John K. Reilly Jr.
04/27/2004	ORDER, AND NOW, this 26th day of April, 2004, re: Civil Non-Jury Trial scheduled for Wed., July 14, 2004 and Thur., July 15, 2004, at 9:00 a.m. each day, before Senior Judge Reilly. by the Court, s/FJA, P.J. 1 cc Atty Mettley, Rychcik and Sughrue	John K. Reilly Jr.
05/17/2004	Answer To Amendment To Complaint. filed by, s/Jason Mettley, Esquire Certificate of Service Verification s/Paul B. Roemer, M.D. no cc	John K. Reilly Jr.
06/24/2004	Notice to Attend, filed by Atty. Stang Original filed to 01-74-CD.	John K. Reilly Jr.
07/15/2004	ORDER, filed. cert to Atty's Mettley, Starg, Rychcik & Sughrue NOW, this 14th day of July, 2004, RE: Finding of fact and conclusions of law	John K. Reilly Jr.
09/16/2004	Transcript of Proceedings with Exhibits, Civil Non-Jury Trail held before Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, July 14, 2004, filed.	John K. Reilly Jr.
09/29/2004	Certificate of Service Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, M.D. was served upon counsel for defendant. s/Jason Metley, Esq.	John K. Reilly Jr.
	Certificate of Service Defendant's Proposed Findings of fact and Conclusions of Law was served upon Jason Mettley, Esq. s/Carl J. Rychcik	John K. Reilly Jr.
	Certificate of Service Defendant's Trial Brief was served upon Jason Mettley, Esq. s/Carl J. Rychcik	John K. Reilly Jr.
12/09/2004	Finding of Fact, filed. cert. to Stang & Rychcik, Mattley & Sughrue Order, Now, this 9th day of December, 2004, Order of this Court that partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.	John K. Reilly Jr.
12/20/2004	Plaintiff's Motion for Post-Trial Relief, filed by Atty. Mettley 1 Cert. to Atty. (Original filed to 01-74-CD)	John K. Reilly Jr.
12/30/2004	Clearfield Professional Group's Response To Roemer's Motion For Post-Trial Relief, filed by s/ William L. Stang, Esquire. No CC. Original filed to 01-74-CD	John K. Reilly Jr.

Date: 09/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:42 AM

ROA Report

Page 3 of 3

Case: 2001-00087-CD

Current Judge: John K. Reilly Jr.

Clearfield Professional Group, LTD vs. Paul B Roemer MD

Civil Other

Date		Judge
02/03/2005	Order, AND NOW, this 3rd day of February, 2005, Order that argument on Plaintiff's Motion for Post-Trial Relief has been scheduled for March 31, 2005, at 10:00 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding BY THE COURT: /s/John K. Reilly, Jr., S.J., Sp. Pres. One CC Attys: Mettley, Stang, Sughrue	John K. Reilly Jr.
03/22/2005	Order, AND NOW, this 22nd day of March, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief currently scheduled for March 31, 2005 at 10:00 a.m. is Continued. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty: Rychek, Mettley. Original to 01-74-CD	John K. Reilly Jr.
05/20/2005	Order, AND NOW, this 20th day of May, 2005, it is the ORDER of the Court that argument on plaintiff's Motion for Post-Trial Relief has been scheduled for Thursday, May 26, 2005 at 9:00 a.m. in Courtroom No. 521, Allegheny County Courthouse, 436 Grant Street, Pittsburgh PA, before the Honorable Judge John K. Reilly. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC to C/A for Service	Fredric Joseph Ammerman
07/08/2005	Order, this 8th day of July, 2005, Plaintiff's Motion for Post Trial Relief is hereby dismissed in accordance with the Findings of Fact, Conclusions of Law and Opinion filed by this Court on December 9, 2004. By The Court, /s/ John K. Reilly, Jr., Senior Judge. CC to Atty J. Mettley, W. Stang, Rychick, Sughrue	John K. Reilly Jr.
07/14/2005	Filing: Praecipe For Entry of Judgment On Decision in Non Jury Trial Paid by: Rychcik, Carl J. (attorney for Clearfield Professional Group, LTD) Receipt number: 1904791 Dated: 07/14/2005 Amount: \$20.00 (Check) Judgment in favor of Clearfield Professional Group, Ltd. and against Paul Brian Roemer in the amount of \$75,580.25. Filed by s/ Carl J. Rychcik, Esquire. 1CC & Notice to Atty. Mettley, statement to Atty Rychcik	John K. Reilly Jr.
08/05/2005	Filing: Appeal to High Court Paid by: Mettley, Jason (attorney for Roemer, Paul B MD) Receipt number: 1906114 Dated: 8/5/2005 Amount: \$45.00 (Check) 1 Cert. to Superior Court with \$60.00 Check. 1 Cert. to Atty.	John K. Reilly Jr.
08/08/2005	Filing: Poundage Paid by: Roemer, Paul B MD (defendant) Receipt number: 1906274 Dated: 8/8/2005 Amount: \$770.00 (Check) Praecipe for Deposit of Security to Stay Execution, filed by Atty. Mettley 1 cert. to Atty. with receipts of \$75,580.25 and \$770.00 Escrow Account # 81151946 at CB & T	John K. Reilly Jr. John K. Reilly Jr.
08/18/2005	Superior Court Appeal Docket Sheet, Docket Number 1420 WDA 2005, filed.	John K. Reilly Jr.
09/09/2005	Praecipe for Deposit of Security to Stay Execution, filed by atty. Mettley 1 Cert. to Atty. with receipt of \$15,116.05 for Deposit in Escrow Account # 81151946	John K. Reilly Jr.
09/21/2005	Case mailed to Superior Court, September 21, 2005.	John K. Reilly Jr.

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01-74-CD

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**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

PAUL BRIAN ROEMER, M.D.,  
Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

CLEARFIELD PROFESSIONAL  
GROUP, LTD,

Appellee

No. 1420 WDA 2005

**FILED** Aug.  
m 11:40 AM to  
AUG 17 2006

William A. Shaw 01-87-CD  
Prothonotary/Clerk of Courts

ER

Appeal from the Judgment entered in the  
Court of Common Pleas of Clearfield County,  
Civil Division, No(s): ~~01-74-CD~~ No. 01-87-CD

BEFORE: DEL SOLE, P.J.E., ORIE MELVIN and TAMILIA, JJ.

MEMORANDUM:

FILED: July 6, 2006

Paul Brian Roemer, M.D., appeals from the July 14, 2005 judgment in the amount of \$75,580.25 entered in favor of Clearfield Professional Group, Ltd. (CPG), on the non-jury verdict in these consolidated cases arising from an employment contract.

The trial court made the following findings of fact pertinent to this appeal:

1. On or about October 26, 1999, Clearfield Hospital and CPG entered into a Group Recruitment Agreement (the "Group Recruitment Agreement") regarding the recruitment of Dr. Paul Brian Roemer ("Dr. Roemer") to the Clearfield area.

2. This agreement was an incentive for CPG to hire Dr. Roemer into its medical practice by providing a guarantee from Clearfield Hospital to cover Dr. Roemer's income for the first 12 months of his employment.

3. Under the Group Recruitment Agreement, Clearfield Hospital specifically agreed to supplement



the income generated by Dr. Roemer during the first year of his employment, if necessary, to meet his monthly salary requirements.

4. On or about October 26, 1999, Dr. Roemer entered into an employment agreement ("the Employment Agreement") with CPG.

5. Under the Employment Agreement, Dr. Roemer was free to terminate his employment and leave CPG at any time following an initial 12-month period, subject to certain payback provisions of the Group Recruitment Agreement, as long as Dr. Roemer provided written notice to CPG 60 days prior to leaving.

6. Under the Employment Agreement, if Dr. Roemer left the Clearfield Hospital service area prior to October 31, 2005, Dr. Roemer was solely responsible to repay all amounts owed to Clearfield Hospital under the Group Recruitment Agreement.

7. The Employment Agreement provided that if Dr. Roemer left CPG at any time, for any reason, and set up a practice within the Clearfield Hospital service area, within three years of the end of his employment, he was to pay CPG \$1,000 a month for 24 months.

8. Under the Employment Agreement, if Dr. Roemer left CPG at any time, for any reason, and practiced within the Clearfield Hospital service area, CPG would provide him with copies of the files for the patients who went with him and Dr. Roemer was required to pay CPG for clerical costs of copying these files.

9. Dr. Roemer decided to leave CPG. On July 13, 2000, Dr. Roemer provided CPG with his written notice of resignation, indicating that, due to differences in professional practices he was resigning, effective November 1, 2000.

10. The date Dr. Roemer chose, November 1, 2000, was the earliest date that Dr. Roemer could

leave CPG voluntarily under the Employment Agreement.

11. When he decided in July of 2000 to leave CPG, Dr. Roemer realized that, pursuant to the Employment Agreement, if he set up a practice within the Clearfield Hospital service area he would be required to pay CPG \$24,000.

12. Dr. Roemer knew when he decided in July of 2000 to leave CPG, under the Employment Agreement, if he set up a practice within the Clearfield Hospital service area, he would be required to reimburse CPG for charges CPG incurred for copying patient files to be forwarded to him.

13. Dr. Roemer knew that, when he decided in July of 2000 to leave CPG, if he left the Clearfield Hospital service area, he would be required to repay Clearfield Hospital the amount it had paid on his behalf under the Group Recruitment Agreement.

14. After tendering his resignation in July of 2000, Dr. Roemer made plans to open his own practice within Clearfield, Pennsylvania.

15. Dr. Roemer admitted that it was his plan that when he set up his new practice, he would take with him the patients which CPG had provided to him during his employment.

16. On October 7, 2000, after discovering several hundred patient files in Dr. Roemer's offices, Dr. [Richard] Johnson [president of CPG] relieved Dr. Roemer of his clinical duties, asked for Dr. Roemer's key to the building and asked him to leave the building.

17. Following the events of October 7, 2000, Dr. Roemer decided that he was going to immediately open up his new practice three weeks early and start seeing patients, rather than waiting until November 1, 200, which he did.

18. On October 10, 2000, Dr. Johnson wrote to Dr. Roemer indicating to him that he had been relieved of his medical duties for the balance of his employment at CPG and indicated that he remained on CPG's payroll.

19. Dr. Roemer received the October 10, 2000, letter from Dr. Johnson.

20. CPG was not willing to pay Dr. Roemer through the end of October 2000 and keep him on the CPG payroll while Dr. Roemer was operating a competing medical practice just blocks down the street from CPG, and diverting CPG patients.

21. Dr. Roemer's employment at CPG effectively ended on October 7, 2000.

22. The decision to effectively end Dr. Roemer's employment three weeks early was made after Dr. Roemer failed to respond to Dr. Johnson's letter of October 10, 2000, and Dr. Roemer continued to operate a competing medical practice down the street from CPG.

23. Following October 7, 2000, Dr. Roemer opened up a medical practice in Clearfield, Pennsylvania.

24. Dr. Roemer continued to practice in the Clearfield area until mid-June of 2001.

25. CPG incurred charges in the amount of \$1,686 for copying patients' charts to be sent to Dr. Roemer.

26. CPG provided Dr. Roemer with a statement of charges incurred by CPG for copying patients' files. Dr. Roemer did not pay CPG for the charges listed.

27. Under the Employment Agreement, if Dr. Roemer left CPG and set up a practice within 36 months of separation, Dr. Roemer became obligated



to pay CPG liquidated damages of \$1,000 per month for 24 months.

28. Dr. Roemer agreed that, prior to October 7, 2000, he realized his obligation to pay \$24,000 to CPG and fully intended to pay CPG this amount.

29. After October 7, 2000, Dr. Roemer did not pay CPG this amount.

30. CPG's estimate of \$1,000 per month was a conservative estimate of what CPG's costs would be from a former employee becoming a competitor in the community.

31. Under the Employment Agreement, Dr. Roemer was solely responsible for any repayment owed to Clearfield Hospital under the Group Recruitment Agreement if he left CPG before October 31, 2005.

32. Clearfield Hospital presently considers amounts owed under the Group Recruitment Agreement to be due and owing to Clearfield Hospital.

33. From November 1999 to September 2000, CPG received guarantee payments from Clearfield Hospital totaling \$48,918.08, pursuant to the Group Recruitment Agreement.

34. Under the Group Recruitment Agreement, collection figures from CPG were to be provided on a cash basis, not an accrual basis.

35. The Group Recruitment Agreement permits Clearfield Hospital to calculate interest on the amounts that are outstanding.

36. Clearfield Hospital has applied an interest rate at prime plus 1 percent which, at the time calculated, was 7.75 percent, accruing from the date of August 1, 2001.

37. Clearfield Hospital sent Dr. Roemer a letter informing Dr. Roemer of the amount that was owed, the interest rate that had been established, and the repayment terms that were expected as part of the Group Recruitment Agreement.

38. Dr. Roemer has not paid Clearfield Hospital the amount demanded of him.

39. Clearfield Hospital has made a demand on CPG, as well, for the amount that is outstanding under the Guarantee Agreement for Dr. Roemer.

40. CPG has an agreement with Clearfield Hospital that Clearfield Hospital would not require reimbursement from CPG of funds owed under the Group Recruitment Agreement until the conclusion of the present litigation.

...

48. Dr. Roemer worked at CPG for approximately 49 weeks out of an initial 52-week contract term.

49. By the time Dr. Roemer's employment ended in October of 2000, CPG had already conferred substantial benefits on Dr. Roemer under the Employment Agreement.

50. Pursuant to the Employment Agreement, from November of 1999 through October of 2000, CPG provided Dr. Roemer with (i) a salary of approximately \$114,000; (ii) billing services; (iii) office space; (iv) nursing personnel; (v) secretarial personnel; (vi) those supplies necessary to practice medicine; (vii) three weeks of paid time off (two weeks vacation, plus one week for continuing medical education); and (viii) health insurance coverage.

Trial Court Opinion, Reilly, Jr., 12/9/04, at 1-9 (citations omitted).

CPG commenced suit against appellant alleging breach of contract, breach of the duty of loyalty, misappropriation, and seeking punitive

damages. Appellant filed suit against CPG seeking rescission of the contract, claiming quantum meruit, tortious interference with contractual relations, and seeking punitive damages. The court entered partial verdicts in favor of both parties.

The court reached the following conclusions pertinent to this appeal:

1. CPG did not materially breach the parties' Employment Agreement.

2. Dr. Roemer received CPG's substantial performance of the Employment Agreement and had an adequate remedy of law available to him for any alleged breach of the Employment Agreement.

3. Dr. Roemer is not entitled to rescission of the Employment Agreement or a finding that he is relieved of his post-employment obligations under the Employment Agreement.

4. CPG did not breach the Employment Agreement.

5. Dr. Roemer breached the Employment Agreement.

6. Dr. Roemer breached the Employment Agreement by setting up a competing medical practice in Clearfield, Pennsylvania, within three years of the end of his employment at CPG and not paying CPG \$1,000 a month.

7. The contractual provision in the Employment Agreement requiring Dr. Roemer to pay CPG \$1,000 a month for 24 months if Dr. Roemer opened a competing practice within the Clearfield Hospital service area within three years of his employment with CPG is enforceable under Pennsylvania law.

8. Dr. Roemer breached the Employment Agreement by not paying CPG the charges of

\$1,686 incurred by CPG for copying records of patients who requested to have their records transferred to Dr. Roemer.

9. Dr. Roemer breached the Employment Agreement by not paying Clearfield Hospital the amounts of the guarantee payments made by Clearfield Hospital to CPG under the Group Recruitment Agreement, plus interest.

*Id.* at 9-10. It entered its verdicts and judgment accordingly. This timely appeal followed in which appellant raises the following questions for our review:

- A. Whether the lower court erred as a matter of law by finding that appellant breached the parties' employment contract, by not paying certain income guarantee payments, plus interest, after the termination of the employment relationship.
- B. Whether the lower court erred as a matter of law by finding that appellant breached the parties' employment contract by not making certain monthly payments to appellee after the termination of the employment relationship.
- C. Whether the lower court erred as a matter of law by finding that appellant breached the parties' employment contract by not reimbursing the appellee for certain clerical expenses after the termination of the employment relationship.

Appellant's brief at 4.<sup>1</sup>

Our scope and standard of review in a non-jury civil trial is

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<sup>1</sup> We admonish appellant for violating Rule 2119 **Argument**, (a) **General rule**, of the Pennsylvania Rules of Appellate Procedure which requires "[t]he argument shall be divided into as many parts as there are questions to be argued.... Pa.R.A.P. 2119(a). Appellant lists three questions but has only two sections in his argument.

limited to a determination of whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in the application of law. Findings of the trial judge in a non-jury case must be given the same weight and effect on appeal as a verdict of a jury and will not be disturbed on appeal absent error of law or abuse of discretion. When this Court reviews the findings of the trial judge, the evidence is viewed in the light most favorable to the victorious party below and all evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected.

***Beckwith Mach. Co. v. Nat'l Union Fire Ins. Co.***, 890 A.2d 403, 405-406 (Pa.Super. 2005). In reviewing the court's application of the law, our review, as with all questions of law, is plenary. ***Id.*** at 406.

In his first issue, appellant argues he was bound by the "post-employment obligations" only if he left CPG, but he contends he did not leave but was discharged (or terminated/fired) on October 7, 2000. Accordingly, he says he did not breach the employment contract and thus is not responsible for those obligations. At the very least, he contends, the court should have made a direct ruling as to whether he left or was discharged. Appellant also argues the court erroneously concluded that because he failed to prove CPG materially breached the agreement, that he necessarily breached the agreement by disregarding the post-employment obligations. Appellant's brief at 17. It should be noted he does not dispute the trial court's ruling that he is not entitled to a rescission of the employment contract since it found CPG did not commit a material breach. ***Id.*** at 18.

The portions of the employment contract at issue are as follows:

Dr. Roemer is free to leave C.P.G. at any time following the initial 12 month period as long as he provides written notice to C.P.G. 60 days prior to leaving, subject to the pay-back provisions of the attached Group Recruitment Agreement. Should Dr. Roemer leave before the end of the "Repayment/Forgiveness Period" (10-31-2005) it is understood that any payments required to the hospital will be Dr. Roemer's sole responsibility.

C.P.G. may discharge Dr. Roemer only at the end of the first 12 month period, or each succeeding 6 month period, only by written notice, given 60 days prior to discharge.

Should Dr. Roemer leave C.P.G. at any time for any reason, and practice within the service area of the Clearfield Hospital within 36 months of separation, C.P.G. will supply him with copies of medical records of any patient who signs a request for record transfer at a cost to reflect only the clerical time to reproduce the records, and, Dr. Roemer will pay C.P.G. \$1,000 per month for 24 months, starting 30 days after being separated from C.P.G.

Record 01-74-CD, No. 1, Complaint, Exhibit A, Employment contract, at 1 (emphasis supplied). The parties do not dispute there are distinct implications based upon whether appellant left or was discharged from CPG, but they dispute whether he, in fact, left or was discharged. They also dispute whether the trial court made a factual determination as to this issue. We agree with appellee that the court addressed this issue and made a finding. Specifically, the court stated in its Opinion:

During the latter part of the contract between Dr. Roemer and CPG, problems arose and Dr. Roemer notified CPG that he would be leaving their employ

on November 1, 2000. On October 7, 2000, the month before Dr. Roemer was to voluntarily leave CPG's employ, Dr. Richard Johnson, President of CPG, relieved Dr. Roemer of his clinical duties and early the following week Dr. Johnson wrote Dr. Roemer informing him that, while his medical duties had been suspended, he remained on the CPG payroll. Dr. Roemer elected not to accept this situation but immediately opened a new competing practice in the Clearfield area.

...

Initially, this court is of the opinion that, in terminating Dr. Roemer's clinical duties, CPG did not violate the terms and conditions of the employment agreement, in that he was immediately notified thereafter that he would remain on the payroll of CPG even though not performing any medical functions. Nevertheless, even if CPG's conduct constituted a breach of the agreement, said breach could not rise to the level of a material breach.

...

The court notes that he got substantially everything he bargained for under his employment agreement except [for] three weeks of salary, and he would have received that had he not *unilaterally decided to leave* CPG and open his own practice.

...

Dr. Roemer was leaving CPG's employ on November 1, 2000, in any event, by his own choice, and the occurrences on October 7, 2000, when Dr. Roemer left CPG three weeks early cannot be attributed to the actions of CPG...

Trial Court Opinion, at 11-13 (emphasis supplied).

This is a factual determination and according to the applicable standard of review as set forth above, we are called upon to determine

whether the finding is supported by competent evidence. **Beckwith Mach. Co., supra.** Upon review, we determine this finding is supported by competent evidence of record.

Dr. Johnson testified he did not intend to fire appellant on October 7, 2000, but rather he had not worked out all of the details and intended mainly to get him out of the building. N.T., at 133. It is true that Roemer testified Johnson told him "you're fired," **Id.** at 49. The court apparently found Johnson to be more credible. "The court's findings are especially binding on appeal, where they are based upon the credibility of the witnesses, unless it appears that the court abused its discretion or that the court's findings lack evidentiary support or that the court capriciously disbelieved the evidence. **Hart v. Arnold**, 884 A.2d 316, 331 (Pa.Super. 2005), *appeal denied*, \_\_\_ Pa. \_\_\_, 897 A.2d 458 (2006), *quoting Fudula v. Keystone Wire & Iron Works, Inc.*, 424 A.2d 921, 927 (Pa.Super. 1981). It is also true that two police officers who were present during the October 7, 2000 incident stated in their report that "Roemer was immediately fired by Johnson." N.T., at 18. Officer Jeffrey Rhone recalled that Johnson asked Roemer for the key to the building but he did not testify that he heard Johnson explicitly fire appellant. **Id.** at 15. It was more of an impression that he had. **Id.** at 18-19. Officer Vincent McGinnis likewise testified that it was his impression Johnson fired Roemer, but he did not hear Johnson state that Roemer was fired. He further conceded that his impressions were limited based on what he could see and hear and that it was very possible



that Johnson was relieving Roemer of his medical responsibilities and not firing him. *Id.* at 23. In addition, it is undisputed that Roemer received the October 10<sup>th</sup> letter from Johnson, stating that Roemer was relieved of his medical duties but remained on the payroll. *Id.* at 83.

Relying upon the evidence set forth above, we conclude the trial court's finding that appellant left CPG's employ is supported by competent evidence. Based upon our deferential standard of review, we must affirm the court's finding on this issue.

We further reject appellant's contention the court erred by concluding that because appellant failed to prove a material breach, that he necessarily breached the employment contract by disregarding the post-employment obligations therein. Appellant's brief at 17.

CPG claimed Roemer was liable to reimburse Clearfield Hospital for the guaranteed payments it made to CPG to secure Roemer's employment. The employment contract provided

Should Dr. Roemer leave before the end of the 'Repayment/Forgiveness Period (10-31-2005) it is understood that any payments required to the hospital will be Dr. Roemer's sole responsibility.

Record 01-74-CD, No. 1, Complaint, Exhibit A, Employment contract, at 1.

The court cited this provision of the contract and then stated

In lieu [sic] of this court's ruling that CPG did not commit a material breach of the employment agreement, Dr. Roemer has no defense to this claim and, therefore, must pay to Clearfield Hospital or reimburse CPG for any payments made to said

hospital in the amount of \$48,918.08, together with interest at agreed upon rate.

Trial Court Opinion, at 15.

The court committed no error in this regard. It concluded, and we affirm the conclusion, that appellant left CPG in October 2000. Thus, it is clear under the express wording of the contract that Roemer is solely responsible for payment of all amounts owed to Clearfield Hospital under the Group Recruitment Agreement.

If CPG had materially breached the employment agreement, appellant might have had a defense to this claim, but the court concluded it did not and appellant does not dispute that conclusion.

In his second and final issue on appeal, appellant argues that even if this Court finds he breached the employment contract and is bound by its post-employment obligations, the non-compete provision requiring that he pay CPG \$1,000 per month if he established a practice within Clearfield Hospital's service area within thirty-six months of separation, is an unenforceable penalty because it is a liquidated damages provision which has no relationship to actual damages suffered or anticipated, regardless of whether the amount was a very low estimate of actual damages, as Johnson's testimony indicated.

Under Pennsylvania law, parties to a contract may include a liquidated damages provision which ensures recovery in cases where the computation of actual damages would be speculative. Such clauses are enforceable provided that, at the time the parties enter into the contract, the sum agreed to

constitutes a reasonable approximation of the expected loss rather than an unlawful penalty.

**Brinich v. Jencka**, 757 A.2d 388, 401-402 (Pa.Super. 2000), citing **Carlos R. Leffler, Inc. v. Hutter**, 696 A.2d 157, 162 (Pa.Super. 1997). Also, the Court noted in **Leffler**, this common law principle was codified in Pennsylvania's Commercial Code. **Leffler**, at 162. While not applicable here, the relevant section of the Code provides some guidance. It specifies, *inter alia*, that "[a] term fixing *unreasonably large* liquidated damages is void as a penalty." 13 Pa.C.S.A. § 2718 (emphasis supplied).

In addition, we note

[t]he question of whether stipulation is a penalty or a valid liquidated damages provision . . . is to be determined by the intention of the parties, drawn from the words of the whole contract, examined in the light of its subject-matter and its surroundings; and in this examination we must consider the relation which the sum stipulated bears to the extent of the injury which may be caused by the several breaches provided against, the ease or difficulty of measuring a breach in damages, and such other matters as are legally or necessarily inherent in the transaction.

**Hanrahan v. Audubon Builders, Inc.**, 614 A.2d 748, 750 (Pa.Super. 1992).

There is no dispute that appellant, in establishing a practice within the service area of Clearfield Hospital, informed his patients of his upcoming move and his new address and phone number, and assumed that most of his patients would follow him to his new practice. In fact, a few hundred did indeed follow him. N.T., at 45, 61, 149. CPG would certainly lose income

from those patients that left the group, but also would lose referrals of friends and relatives of those patients. *Id.* at 180. It also stands to reason that Roemer's establishment of a new practice in the community would likely divert other new patients who might otherwise have chosen CPG for care. As Johnson explained, the losses incurred when a physician leaves the group and establishes a competing practice are difficult to calculate. *Id.* at 149-150, 179-180. Johnson further testified that the purpose of the provision at issue was to offset these potential losses. *Id.* at 149-150. The \$1,000 per month figure was determined after several discussions within CPG and was an effort to quantify the damages incurred when a member establishes a competing practice in the community, as those damages are difficult to determine. *Id.* at 180. The amount, according to Johnson, was "an attempt at a fair amount of monies" and a "very low," "extremely conservative" estimate of the losses CPG would incur. *Id.* at 149-150, 180.

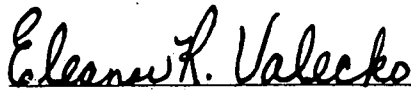
The record clearly supports the court's conclusion that it is difficult to calculate damages in this situation. *See* Trial Court Opinion, at 14. Appellant does not dispute that; rather, he asserts that the amount stipulated in the contract was not a reasonable approximation of damages but is a penalty.

Considering the intention of the parties and the subject matter of the agreement, as we are required to do, we find that it is not a penalty. *See Hanrahan, supra*. Certainly, the creation of a competing practice in the community and the diversion of three hundred existing patients, referrals of

their friends and relatives, and countless other patients, would cause CPG to incur losses, which it legitimately sought to mitigate by this provision. The testimony reveals, and significantly, appellant does not dispute that this amount, was a low estimate of the losses CPG would incur. ***See Leffler***, at 162, *citing* 13 Pa.C.S.A. § 2718 (stating that "[a] term fixing *unreasonably large* liquidated damages is void as a penalty") (emphasis supplied). In fact, as the court noted, appellant intended to pay the amount stipulated in the contract but for CPG allegedly breaching the contract. N.T., at 80. For the above stated reasons, we affirm the court's holding on this issue. The record supports its findings and it committed no error of law.

Judgment affirmed.

Judgment Entered:



Deputy Prothonotary

DATE: July 6, 2006

FILED

AUG 17 2006

William A. Shaw  
Prothonotary/Clerk of Courts

**The Superior Court of Pennsylvania**  
**Sitting at Pittsburgh**

6<sup>th</sup> floor Grant Building  
Suite 600  
Pittsburgh, Pennsylvania  
15219

 COPY

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND**

under

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:  
**Record 3 Parts, 1 Transcript, 1 Set of Exhibits**  
**Superior Court Judgment Order and Opinion**

As remanded from said court in the following matter:  
**ROEMER V CLEARFIELD PROFESSIONAL GROUP**  
**NO, 1420 WDA 2005**

**COURT OF COMMON PLEAS-CIVIL DIVISION-CLEARFIELD COUNTY**  
**No. 01-74-CD- No. 01-87- CD**

**FILED**

*m 11:30 AM*  
**AUG 17 2006** *Orig. to*

William A. Shaw  
Prothonotary/Clerk of Courts

*a-87-CD*

*OK*

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded August 15, 2006

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor R. Valecko*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: August 17, 2006

*William A. Shaw*  
(Signature & Title)

**WILLIAM A. SHAW**  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD PROFESSIONAL,  
GROUP, LTD.,

Plaintiff/Defendant,

vs.

PAUL BRIAN ROEMER, M.D.

Defendant/Plaintiff.

CIVIL DIVISION

NO. 01-87-CD

~~NO. 01-74-CD~~

**CONSENT MOTION FOR  
RELEASE OF FUNDS**

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221  
Carl J. Rychcik  
PA ID #73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**COPY**  
**FILED** 3cc  
m/11:04/37 Atty Stang  
AUG 17 2006

William A. Shaw  
Prothonotary/Clerk of Courts

Orig. to 01-87-CD

(6)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CLEARFIELD PROFESSIONAL GROUP, LTD., CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-87-CD  
NO. 01-74-CD

VS.

PAUL BRIAN ROEMER, M.D.

Defendant/Plaintiff.

ORDER OF COURT

AND NOW, this 18<sup>th</sup> day of August, 2006, upon consideration of the

foregoing Consent Motion for Release of Funds ("Motion"), it is hereby ORDERED, ADJUDGED and DECREED that the Motion is GRANTED and the Prothonotary shall issue

two checks distributing the funds contained in the escrow account relating to docket No. 01-87-

CD ("the Escrow Account"). The first check, in the amount of \$80,455.18, shall be payable to

Clearfield Professional Group, Ltd., and the second check, for the amount remaining in the

Escrow Account after Clearfield Professional Group's check is deducted, shall be payable to

Paul Brian Roemer, M.D.

BY THE COURT:

*Paul A. Roemer*  
J.

**FILED**  
AUG 21 2006  
CLERK OF COURT  
William A. Shaw  
Prothonotary/Clerk of Courts  
672  
COPY  
3cc  
01-87-CD  
2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CLEARFIELD PROFESSIONAL,  
GROUP, LTD.,

Plaintiff/Defendant,

vs.

PAUL BRIAN ROEMER, M.D.

Defendant/Plaintiff.

CIVIL DIVISION

NO. 01-74-CD

**PRAECIPE TO SATISFY JUDGMENT**

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
PA ID # 33221  
Carl J. Rychcik  
PA ID #73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**FILED** pd \$7.00 Atty  
M/11:40 am 2cc + 1 Set of  
AUG 23 2006 Sat issued to  
(5) Atty Rychcik

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CLEARFIELD PROFESSIONAL GROUP, LTD., CIVIL DIVISION

Plaintiff/Defendant, NO. 01-74-CD

vs.

PAUL BRIAN ROEMER, M.D.

Defendant/Plaintiff.

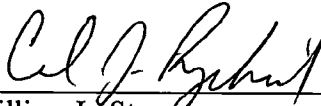
**PRAECIPE TO SATISFY JUDGMENT**

**TO THE PROTHONOTARY:**

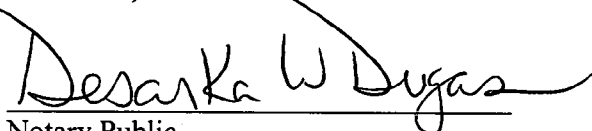
Kindly mark the judgment entered in the above-captioned matter satisfied and all costs paid, as noted in the executed Statement of Judgment, attached hereto as Exhibit 1.

Respectfully submitted,

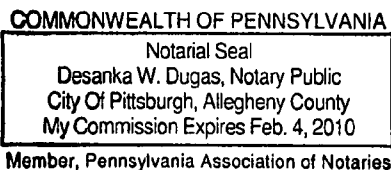
DATED: August 22, 2006

  
\_\_\_\_\_  
William L. Stang  
PA I.D. # 33221  
Carl J. Rychcik  
PA I.D. # 73754  
**FOX ROTHSCHILD LLP**  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334  
Counsel for Clearfield Professional Group

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 22 DAY OF  
AUGUST, 2006

  
\_\_\_\_\_  
Notary Public

PT1 197453v1 08/22/06





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

Paul Brian Roemer M.D  
Plaintiff(s)

No.: 2001-00074-CD

Real Debt: \$75,580.25

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Clearfield Professional Group, LTD  
Defendant(s)

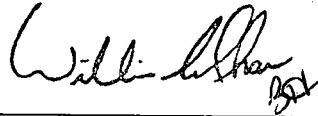
Entry: \$20.00

Instrument: Judgment on Decision in  
Non Jury Trial

Date of Entry: July 14, 2005

Expires: July 14, 2010

Certified from the record this 14th day of July, 2005.

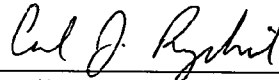


William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on August 22, 2006, of defendant full satisfaction of this Judgment,  
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

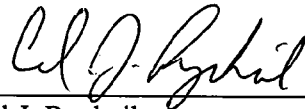


Plaintiff/Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Praecipe to Satisfy Judgment was served upon the following individual by first class U.S. Mail this 22nd day of August, 2006:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

A handwritten signature in cursive script, appearing to read "Carl J. Rychcik", is written over a horizontal line.

Carl J. Rychcik

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

CERTIFICATE OF SATISFACTION OF JUDGMENT

Paul Brian Roemer M.D

No.: 2001-00074-CD

Vs.

Debt: \$75,580.25

Clearfield Professional Group, LTD


Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Wednesday, August 23, 2006 , directions for satisfaction having been received,  
and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 23rd day of August, A.D. 2006.

  
Prothonotary





reasonable value of services Dr. Roemer actually performed on behalf of the CPG in October 2000. In Count III, he asserts an action for tortious interference with prospective contractual relations. Count IV asserts an action for conversion, and Count V is an action for punitive damages.

A day later, on January 17, 2001, the CPG responded by initiating its own lawsuit against Dr. Roemer, docketed at Civil Action No. 01-87-CD. The CPG's lawsuit asserts four legal claims against Dr. Roemer. Count I is an action for breach of contract, alleging Dr. Roemer breached the parties' employment contract and requesting judgment in an amount in excess of \$20,000. Count II, an action for breach of duty of loyalty, alleges Dr. Roemer breached common law duties he owed the CPG during the employment relationship, and requests judgment in an amount in excess of \$20,000. Count III, an action for misappropriation, alleges that Dr. Roemer misappropriated property belonging to the CPG and requests judgment in an amount in excess of \$20,000. Count IV states an action for punitive damages.

Both parties' claims for punitive damages were dismissed by the Court on summary judgment by Order dated December 16, 2003.

The essence of this dispute regards what obligations, if any, remain between the parties under their employment contract after the CPG terminated Dr. Roemer's employment on October 7, 2000. Prior to the filing of the instant Petition, the "battle lines" of the dispute over the parties' employment contract issues were drawn around two issues: 1) whether Dr. Roemer was liable to pay the CPG \$1,000 per month for 24 months by virtue of his establishing a medical practice in the Clearfield area after he was terminated by the CPG; and, 2) whether Dr. Roemer was obligated under the employment contract to pay for copies of records of individuals who remained patients of Dr. Roemer after he was terminated from the CPG. Both parties'

Complaints clearly defined these as the issues. *See*: CPG's Complaint, ¶¶25-27; Dr. Roemer's Complaint, ¶¶40-44.

After the filing of the Complaint, the parties engaged in discovery for the next two and one-half years. Dr. Roemer was deposed by the CPG on October 17, 2001. During the deposition, he testified that he had received a letter from the Clearfield Hospital in June demanding payment of approximately \$49,000 in income advances the Clearfield Hospital made to the CPG towards Dr. Roemer's salary. Dr. Roemer further testified that he sent a written response to the Hospital denying any obligation to pay. While Dr. Roemer was questioned about this subject, it was not a significant topic of the deposition: questioning over this topic covers just 3½ pages of a 252-page deposition transcript.

The next day, October 18, 2001, Dr. Roemer deposed the CPG's president, Dr. Richard Johnson. Dr. Roemer's attorney did question Dr. Johnson about the income guarantee issue. Dr. Johnson was asked about the purpose of such an arrangement and was asked who he thought was ultimately responsible to repay the income guarantee advances. Dr. Johnson testified that the CPG's contract with the Clearfield Hospital required the CPG to repay the income guarantee advances, but he testified that there was a provision of the CPG's employment contract with Dr. Roemer addressing the topic. His testimony suggested that Dr. Roemer would be liable to repay the CPG for the income advances if he voluntarily quit, but not if he was discharged from employment.

After Dr. Johnson's deposition on October 18, 2001, the CPG uttered nary a word about the income guarantee payments until December 6, 2002, when it served Dr. Roemer with a Second Request for Production of Documents that requested production of the letters he testified about during his deposition -- the letter from the Clearfield Hospital in June, 2001 demanding

repayment of the guarantee and Dr. Roemer's written response thereto. Dr. Roemer subsequently provided copies of those documents to the CPG.

On July 29, 2003, the CPG filed a Praecipe for a Trial Date. On August 1, 2003, Dr. Roemer filed a motion for summary judgment, and on or about September 25, 2003, the CPG filed a cross-motion for summary judgment. After these motions were filed on October 16, 2003, the CPG served Dr. Roemer with a "Supplemental" discovery response. In fact, this Supplemental Discovery response was produced after Dr. Roemer had already filed his principal brief in support of his motion for summary judgment. The Supplemental Discovery response consisted solely of what appears to be a letter dated September 19, 2003 from the Clearfield Hospital to the CPG demanding it reimburse \$55,844.11 in income guarantee advances that the Hospital had made to the CPG toward Dr. Roemer's salary. Still, the CPG never asserted any claim, in any form, that Dr. Roemer was liable to the CPG for this money.<sup>1</sup>

The *first time* the CPG put any claim in writing that Dr. Roemer was liable to the CPG for the income guarantee advances was in its brief in support of summary judgment, filed on October 28, 2003. In that brief, the CPG casually asserted that if the Court ruled in its favor Dr. Roemer would be liable for the income guarantee payments. Dr. Roemer's opposition brief, filed on November 7, 2003, specifically pointed out that the CPG had not pled a claim for the income guarantee payments, or asserted the claim prior to the summary judgment brief. Clearly, the rules of civil procedure do not permit parties to add claims in summary judgment briefs.

This case was subsequently placed on the 2004 Winter Civil Trial List, and by letter dated December 26, 2003, the court administrator notified the parties that a pre-trial conference

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<sup>1</sup> In its Brief in support of the instant Petition, the CPG asserts that "[w]ithin weeks of receiving notice of Clearfield Hospital's demand, CPG promptly notified Roemer's counsel of the demand and asserted a claim for this amount." CPG's Brief, p. 4. Presumably, the CPG got the letter from the Hospital a few days after its date, September 19, 2003. They served the undersigned with a copy of the letter on or about October 16, 2003. If that is "prompt", so be it. However, the CPG still did not assert any claim or make any demands of Dr. Roemer at that time.

was scheduled for January 15, 2004. On December 29, 2003, the CPG's attorney contacted the undersigned and indicated that she was leaving her job with the firm representing the CPG, and asked that the case be continued from the Winter to the Spring trial list because "replacement counsel will require a reasonable amount of time to prepare for trial". On this basis, and this basis alone, Dr. Roemer stipulated to the request for an extension.

Following a telephone conference with the Court on January 14, 2004, the parties agreed to submit this case for a bench trial to be scheduled at the parties' convenience sometime in April, 2004. The Court entered an order on January 15, 2004 reflecting that the case should be removed from the Winter jury trial list and should be scheduled by the parties through the court administrator.

On February 18, 2004, more than 3 years after these actions were initiated and less than 2 months before the case is to be submitted at bench trial, the CPG filed the instant Petition seeking to amend its complaint to include a claim against Dr. Roemer to recover some \$55,000 in income guarantee payments. Dr. Roemer submits that the opportunity for the CPG to add this claim to the lawsuit has passed and that he will suffer prejudice if the Court permits the CPG to amend its Complaint now. Accordingly, Dr. Roemer respectfully requests that the Court deny the CPG's request for leave to amend the Complaint.

## **II. ARGUMENT**

Dr. Roemer admits that courts liberally grant amendments to pleadings under Pa. R. Civ. Proc. 1033 to secure a determination of cases on their merits whenever possible. Beckner v. Copeland Corp., 785 A.2d 1003, 1005 (Pa. Super. 2001). The purpose of permitting amendments, however, "is to prevent cases from turning on purely technical defects". Newcomer v. Civil Service Com'n of Fairchance Borough, 100 Pa. Cmwlth. 559, 515 A.2d 108,

111 (1986). Courts will deny a petition for leave to amend where the proposed amendment presents an entirely new cause of action, when the proposed amendment unfairly surprises the opposing party or prejudices the opposing party. Sejpal v. Corson, Mitchell, Tomhave & McKinley, M.D.'s, Inc., 445 Pa. Super. 427, 665 A.2d 1198, 1200 (1995). The Commonwealth Court has observed that “the later in the case such a petition [for leave to amend] is filed, the more it can be presumed that prejudice will flow from its grant, and the less actual prejudice need be demonstrated.” Newcomer, 515 A.2d at 511.

The prejudice that will fall on Dr. Roemer need not be presumed in this instance. If the court grants the CPG’s leave to amend, Dr. Roemer will be denied the opportunity to engage in any discovery regarding the amount of income guarantees actually paid by the Clearfield Hospital to the CPG, as well as (and more significantly) *how* those payments were calculated. Under the Group Recruitment Agreement, the amount of any income guarantee payments should be determined based on the income generated by Dr. Roemer for the CPG on a monthly basis. If the CPG accidentally or intentionally credited other doctors for income actually generated by Dr. Roemer, that would have increased the amount of the income guarantee payment made by the Hospital. Or, if the CPG credited Dr. Roemer with certain income in the wrong month, that likewise would have an impact on how much of an income guarantee payment the CPG should or should not have received. For Dr. Roemer to properly prepare to litigate the issue of damages created by the CPG’s proposed amendment, he needs access to Hospital and CPG records showing the services he performed, the income that the CPG received as a result of those services, the CPG’s records showing how much income he was credited as having generated and when he was credited for generating it, and how much the Hospital actually paid the CPG in

income advances. If the amendment being sought by the CPG is permitted, Dr. Roemer will be walking into trial in April with no idea what evidence exists regarding these questions.

Pennsylvania does not follow the practice of notice pleading like federal courts. Pennsylvania is a fact pleading state. Smith v Brown, 283 Pa. Super. 116, 423 A.2d 743 (1980). Pleadings in Pennsylvania serve several important purposes; notably, they put the defendant on notice of what they must defend at trial and they formulate the issues of the case. *See*: Cassell v Shellenberger, 356 Pa. Super. 101, 514 A.2d 163 (1986), Bromiley v Collins, 1 D & C 3d 94 (1977). The CPG did not plead a claim for the income guarantee payments, so Dr. Roemer did not engage in discovery as he otherwise would have. Depriving Dr. Roemer of the opportunity to engage in discovery of these matters will directly prejudice his ability to defend the claims over the income guarantee payments.

Dr. Roemer agrees with the CPG that permitting the proposed amendment would serve the interests of judicial economy. Judicial economy is not the singular objective of the rules of civil procedure, though. The rules also exist “to secure the just, ... determination of every action.” Pa.R.Civ.P. 126. More particularly, the rules contain discovery procedures to prevent “trial by ambush”. If this amendment is permitted, Dr. Roemer will be walking into an ambush in April in that the CPG will know on trial day what evidence it does and does not have proving damages relative to the income guarantee payments, and Dr. Roemer will not.

If, as the CPG claims, the statute of limitations has not expired on its claim regarding the income guarantee payments, then it can pursue that claim in a separate lawsuit where Dr. Roemer will be permitted to engage in discovery. Such a lawsuit would ultimately be dismissed or limited to an adjudication of damages, anyway, as the court’s determination in this lawsuit whether Dr. Roemer is bound to any of the post-employment obligations of the parties’

employment contract would very likely have a collateral estoppel affect on the question of liability in a subsequent lawsuit.

### **III. CONCLUSION**

For these reasons, Dr. Roemer respectfully requests that this Honorable Court deny the CPG's Petition for Leave to Amend its pleadings.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Jason Mettley, Esquire

Pa. I.D. #81966

219 Fort Pitt Boulevard

Pittsburgh, PA 15222

(412) 281-3850

Attorney for Paul B. Roemer, M.D.

DATE: 5 March 2004

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within Brief in Support of Answer to Petition for Permission to File Amendment to Complaint was served upon counsel for defendant this 5<sup>th</sup> day of March, 2004, by first class mail, postage prepaid, addressed as follows:

William L. Stang, Esquire  
Fox, Rothschild, O'Brien & Frankel, LLP  
625 Liberty Avenue; 29<sup>th</sup> Floor  
Pittsburgh, PA 15222

  
Jason Mettley, Esquire

LAW OFFICES  
**JUBELIRER, PASS & INTRIERI, P.C.**

219 FORT PITT BOULEVARD  
PITTSBURGH, PENNSYLVANIA 15222-1576

412-281-3850  
412-261-0147

BEN PAUL JUBELIRER (1904-1983)  
FRANK P. C. INTRIERI (1942-1976)  
FAX: 412-281-1985

JOSEPH J. PASS  
NEAL R. CRAMER  
ERNEST B. ORSATTI  
EDWARD H. WALTER  
ROBERT A. EBERLE  
JAMES A. WELKER  
JASON METTLEY  
JOSEPH SANTINO PASS

March 5, 2004

Marcy Kelley, Deputy Court Administrator  
Office of Court Administrator  
Clearfield County Courthouse  
Suite 2128, 230 East Market Street  
Clearfield, Pennsylvania 16830

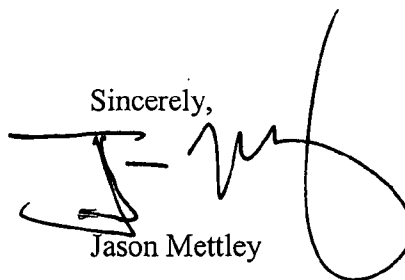
RE: Paul Brian Roemer, M.D. v. Clearfield Professional Group, Ltd.  
Civil Action Nos. 01-74-CD, 01-87-CD

Dear Ms. Kelley:

Enclosed for filing please find Dr. Paul B. Roemer's Brief in Support of Answer to Petition for Permission to File Amendment to Complaint.

Thank you very kindly.

Sincerely,



Jason Mettley

JM:db  
Encl.

cc: William L. Stang, Esquire (w/encl.)  
Paul B. Roemer, M.D. (w/encl.)

**RECEIVED**

**MAR 08 2004**

**COURT ADMINISTRATOR'S  
OFFICE**



## Civil Other

Date		Judge
01/16/2001	Filing: Civil Complaint Paid by: Jason Mettley, Esquire Receipt number: 1816734 Dated: 01/16/2001 Amount: \$80.00 (Check) ① One Certified Copy to Sheriff One Certified Copy to Attorney Mettley	21 No Judge
01/23/2001	② Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Costs: \$29.00	No Judge
02/20/2001	③ Preliminary Objections to Complaint, Filed by s/William L. Stang, Esq. Susan Brahm Gunn, Esq. Cert of Service no cc	6 No Judge
05/30/2001	④ Defendant's Withdrawal of Preliminary Objections to Complaint, filed by s/Susan Brahm Gunn, Esq. No CC	3 John K. Reilly Jr.
07/02/2001	⑤ Answer and New Matter of Clearfield Professional Group, Ltd. filed by s/Susan Brahm Gunn, Esq. 1 cc to atty	33 John K. Reilly Jr.
07/19/2001	⑥ Reply to New Matter. Filed by s/Jason Mettley, Esq. Cert of Svc atty Mettley	1 cc 20 John K. Reilly Jr.
10/11/2001	⑦ Stipulated Motion to Consolidate, filed by s/Jason Mettley, Esq. s/Susan Brahm Gunn, Esq. No CC Cases to be consolidated to 01-74-CD, 01-87-CD	John K. Reilly Jr.
10/15/2001	⑧ ORDER, filed 2 Cert. to Atty Gunn AND NOW, this 15th day of October, 2001, IT IS ORDERED, that the motion be, and the same hereby is, GRANTED.	5 John K. Reilly Jr.
07/31/2003	⑧ Praeipe for a Trial Date, filed by Atty. Gunn copy to C/A	3 John K. Reilly Jr.
08/01/2003	⑨ Motion For Summary Judgment In Part And In Whole Of Paul B. Roemer, M.D. filed by s/Jason Mettley, Esquire Certificate of Service 2 cc Atty Mettley	6 John K. Reilly Jr.
09/26/2003	⑩ Defendant's Cross Motion for Summary Judgment filed by Atty. Gunn. CC to Atty.	16 John K. Reilly Jr.
10/02/2003	⑪ Appendix to Plaintiff's Motions for Summary Judgment, filed by Atty. Mettley No Cert. Copies (Also filed to 2001-87-CD)	3/c John K. Reilly Jr.
12/16/2003	⑫ OPINION AND ORDER, NOW, this 16th day of December, 2003, re; Motions shall be and are hereby GRANTED in part and DISMISSED in part in accordance w/foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Attys: Kabala, Gunn, Mettley, and Stand	3 John K. Reilly Jr.
01/02/2004	⑬ Defendant's Motion For Continuance Of Trial To Spring Term. filed by, s/Sue Gunn, Esquire Stipulation of Counsel s/Jason Mettley, Esq. Certificate of Service no cc	6 John K. Reilly Jr.
01/09/2004	⑭ ORDER, NOW, this 7th day of January, 2004, re: Defendant's Motion for Continuance of Trial to Spring Term is DENIED. by the Court, s/FJA,P.J. 1 cc Atty Gunn	John K. Reilly Jr.
01/15/2004	⑮ ORDER, NOW, this 15th day of January, 2004, re: above-captioned matter shall be removed from the current list for jury trials and scheduled by the CA for trial w/o jury at the convenience of the parties. Pretrial conference scheduled for Jan. 15, 2004, shall be and is hereby CANCELLED. by the Court, s/JKR,JR., Senior Judge, Specially Presiding copies mailed to: Jason Mettley, Esq., Wm Stang, Esq and Carl Rychcik, Esq.	John K. Reilly Jr.
02/11/2004	⑯ Praeipe For Entry Of Appearance On Behalf Of Clearfield Professional Group, Ltd. filed by, s/Carl J. Rychcik, Esq. Certificate of Service cc Copy to C/A	3 John K. Reilly Jr.
02/19/2004	⑰ Petition For Permission to File Amendment To Complaint and Request For Rule To Show Cause. filed by, s/ William L. Stang, Esq. 1 cc Atty	21 John K. Reilly Jr.

Date: 08/24/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:02 AM

ROA Report

Page 2 of 3

Case: 2001-00074-CD

Current Judge: John K. Reilly Jr.

Paul Brian Roemer M.D vs. Clearfield Professional Group, LTD

Civil Other

Date		Judge
02/19/2004	(17) ORDER, AND NOW, to wit: this 19th day of February, 2004, Rule issued upon PAUL BRIAN ROEMER, M.D. Rule Returnable on the 8th day of March, 2004, for filing Written Response. by the Court, s/FJA, P.J. 1 cc to Atty	John K. Reilly Jr.
02/20/2004	(18) Affidavit of Service, Order/Rule to Show Cause dated 19th day of February, 2004 and Petition/Motion for Permission to Amend Complaint filed 19th day of February, 2004 to be served on Plaintiff/Defendant Paul Brian Roemer, M.D. through Jason Mettley, Esq. filed by, s/John Sughrue, Esquire Certificate of Service 3 cc to Atty	John K. Reilly Jr.
03/08/2004	(19) Answer To Petition For Permission to File Amendment to Complaint. filed by, s/Jason Mettley, Esquire Verification s/Paul Brian Roemer, M.D. Certificate of Service 1 cc to Atty	John K. Reilly Jr.
03/11/2004	(20) ORDER filed. AND NOW, this 10th day of March, 2004, it is the ORDER of the Court that argument on atty. Stang's Petition has been scheduled for March 24, 2004 before Judge Reilly. s/FJA 1CC to Atty. Stang, 1 CC to Atty. Mettley.	John K. Reilly Jr.
03/16/2004	(21) Praecipe For Appearance on behalf of Clearfield Professional Group, LTD s filed by, s/ John Sughrue, Esquire 3 cc Atty Sughrue	John K. Reilly Jr.
03/24/2004	(22) ORDER, NOW, this 24th day of March, 2004, re: Petition for Permission to File Amendment to Complaint filed on behalf of Clearfield Professional Group, Ltd. is GRANTED. Clearfield Professional Group, Ltd. is directed to file said amended complaint forthwith. by the Court, s/JKR, JR., S.J., Specially Presiding cc to Attys, Mettley, Stang & Sughrue	John K. Reilly Jr.
03/26/2004	(23) Amendment to Complaint. filed by, s/Carl J. Rychcik, Esquire Certificate of Service 1 cc to Atty	John K. Reilly Jr.
04/27/2004	(24) ORDER, AND NOW, this 26th day of April, 2004, re: Civil Non-Jury Trial scheduled for Wed., July 14, 2004 and Thur., July 15, 2004 at 9:00 a.m. each day before Senior Judge Reilly. by the Court, s/FJA, P.J. 1 cc Attys Mettley, Rychcik and Sughrue	John K. Reilly Jr.
05/17/2004	(25) Answer To Amendment to Complaint. filed by, s/Jason Mettley, Esquire Certificate of Service Verification s/Paul B. Roemer, M.D. no cc	John K. Reilly Jr.
06/24/2004	(26) Notice to Attend, filed by Atty. Stang no cert. copy filed to 01-87-CD	John K. Reilly Jr.
07/15/2004	(27) ORDER, filed. cert. to Atty's Mettley, Starg & Rychick Now, this 14th day of July, 2004, RE: Findings of Fact and conclusions of law.	John K. Reilly Jr.
09/16/2004	(28) Transcript of Proceedings with Exhibits, Civil Non-Jury Trail held before Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, July 14, 2004, filed.	John K. Reilly Jr.
09/29/2004	(29) Certificate of Service of Proposed Findings of Fact, Conclusions of Law and Legal Memorandum of Paul B. Roemer, M.D. was served upon counsel for the Defendant. No cc.	John K. Reilly Jr.
	(30) Certificate of Service Defendant's Proposed Findings of Fact and Conclusions of Law filed by Atty. Rychcik	John K. Reilly Jr.
	(31) Certificate of Service Defendant's Trial Brief was served upon Jason Mettley, Esq. filed by Carl J. Rychcik	John K. Reilly Jr.
12/09/2004	(32) Finding of Fact, filed. Cert. to Atty's Mettley, Stang & Rychcik Order, Now, this 9th day of December, 2004, Partial judgments shall be entered in favor of both parties in accordance with the foregoing Opinion.	John K. Reilly Jr.
12/20/2004	(33) Plaintiff's Motion for Post-Trial Relief, filed by Atty. Mettley 1 Cert. to Atty	John K. Reilly Jr.
12/30/2004	(34) Clearfield Professional Group's Response To Roemer's Motion For Post-Trial Relief, filed by s/ William L. Stang, Esquire. No CC	John K. Reilly Jr.

Date: 08/24/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:02 AM

ROA Report

Page 3 of 3

Case: 2001-00074-CD

Current Judge: John K. Reilly Jr.

Paul Brian Roemer M.D vs. Clearfield Professional Group, LTD

Civil Other

Date		Judge
02/03/2005	Order, AND NOW, this 3rd day of February, 2005, Order that argument on Plaintiff's Motion for Post-Trial Relief has been scheduled for March 31, 2005, at 10:00 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding BY THE COURT: /s/John K. Reilly, Jr., S.J., Sp. Pres. One CC Attys: Mettley, Stang, Sughrue	John K. Reilly Jr.
03/22/2005	Order, AND NOW, this 22nd day of March, 2005, it is the ORDER of the Court that argument on Plaintiff's Motion for Post-Trial Relief scheduled for March 31, 2005 at 10:00 a.m. is Continued. BY THE COURT: Fredric J. Ammerman, President Judge. 1CC Attys: Rycheck, Mettley.	John K. Reilly Jr.
05/20/2005	Order, AND NOW, this 20th day of May, 2005, it is the ORDER of the Court that argument on plaintiff's Motion for Post-Trial Relief has been scheduled for Thursday, May 26, 2005 at 9:00 a.m. in Courtroom No. 521, Allegheny County Courthouse, 436 Grant Street, Pittsburgh PA, before the Honorable Judge John K. Reilly. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC to C/A for Service	Fredric Joseph Ammerman
07/08/2005	Order, this 8th day of July, 2005, Plaintiff's Motion for Post Trial Relief is hereby dismissed in accordance with the Findings of Fact, Conclusions of Law and Opinion filed by this Court on December 9, 2004. By The Court, /s/ John K. Reilly, Jr., Senior Judge. CC to Atty j. Mettley, W. Stang, Rychick, Sughrue	John K. Reilly Jr.
07/14/2005	Filing: Praeipe For Entry of Judgment on Decision in Non Jury Trial by: Rychcik, Carl J. (attorney for Clearfield Professional Group, LTD) Receipt number: 1904790 Dated: 07/14/2005 Amount: \$20.00 (Check) Judgment in favor of Clearfield Professional Group, Ltd. and against Paul Brian Roemer in the amount of \$75,580.25. filed by s/Carl J. Rychcik, Esquire. 1CC & Notice to Atty. Mettley, Statement to Atty Rychcik	John K. Reilly Jr.
08/05/2005	Notice of Appeal, filed by s/Jason Mettley, Esq. One CC to Atty, One CC Superior Court with check for \$60.00	John K. Reilly Jr.
08/08/2005	Praeipe for Deposit of Security to Stay Execution, filed by s/Jason Mettley, Esq. One CC Atty	John K. Reilly Jr.
08/18/2005	Superior Court Appeal Docket Sheet, Docket Number 1420 WDA 2005, filed. No CC	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

**BRIEF IN SUPPORT OF PETITION  
FOR PERMISSION TO FILE  
AMENDMENT TO COMPLAINT**

Filed on behalf of  
Clearfield Professional Group, Ltd.,  
Defendant/Plaintiff

Counsel of Record for this Party:

William L. Stang  
Pa. ID # 33221  
Carl J. Rychcik  
Pa. ID # 73754

FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
(412) 391-1334

**RECEIVED**

**FEB 26 2004**

**COURT ADMINISTRATOR'S  
OFFICE**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAUL BRIAN ROEMER, M.D.,

CIVIL DIVISION

Plaintiff/Defendant,

NO. 01-74-CD

NO. 01-87-CD

vs.

CLEARFIELD PROFESSIONAL  
GROUP, LTD.,

Defendant/Plaintiff.

**BRIEF IN SUPPORT OF PETITION FOR PERMISSION  
TO FILE AMENDMENT TO COMPLAINT**

Pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure, Clearfield Professional Group, Ltd. ("CPG"), defendant at Civil Action Number 01-74-CD/plaintiff at Civil Action Number 01-87-CD, through its counsel, Fox Rothschild LLP, submits this Brief in Support of Petition for Permission to File Amendment to Complaint.

**I. BACKGROUND/HISTORY**

On January 16, 2001, Paul Brian Roemer ("Roemer") filed an action against CPG asserting claims for: (i) declaratory relief relating to Roemer's Employment Contract with CPG; (ii) quantum meruit for services allegedly provided by Roemer to CPG in October 2000; (iii) tortious interference with prospective contractual relations; and (iv) punitive damages. On January 17, 2001, CPG filed its own Complaint asserting claims against Roemer for: (i) breach of Roemer's Employment Contract with CPG; (ii) breach of Roemer's duty of loyalty owed to his employer; (iii) misappropriation of CPG's property; and (iv) punitive damages. The two actions have been consolidated.

As a matter of housekeeping, CPG presently seeks to file an Amendment to its Complaint to further define its breach of contract claim, and the damages being sought, in light of events which have transpired after the initial filing of CPG's Complaint. In particular, just within the last six months, on September 19, 2003, Clearfield Hospital made a written demand for CPG to repay subsidized income guarantee payments for Roemer provided by Clearfield Hospital to CPG, in the amount of \$55,844.11, for principal and interest owed. This was the first time that such a demand was made by Clearfield Hospital. Pursuant to the terms of his Employment Contract, Roemer agreed to indemnify CPG for the repayment obligation to Clearfield Hospital in the event Roemer left Clearfield Professional Group before the end of an initial five-year period.

Within a month of receiving the demand from Clearfield Hospital, CPG informed Roemer that this demand had been made, and provided to Roemer's counsel a copy of Clearfield Hospital's letter. This matter and the damages alleged were also raised in CPG's Motion for Summary Judgment filed on October 28, 2003. The parties' cross motions for summary judgment have only recently been ruled upon, with the only dispositive result being the dismissal of both parties' claims for punitive damages. Despite the terms of the Employment Contract, Roemer has refused to pay CPG the amount demanded by Clearfield Hospital. Roemer's failure to indemnify CPG for the \$55,844.11 owed to Clearfield Hospital is a material breach of the terms of his Employment Contract. The present case has not yet been set for trial. Despite their prompt and adequate notice of this claim and lack of prejudice, Roemer and his counsel have refused to consent to CPG's proposed Amendment to Complaint.

## **II. ISSUES/QUESTIONS**

Should CPG be granted leave to file its Amendment to Complaint? **Yes.**

### III. ARGUMENT

Pursuant to Pennsylvania Rule of Civil Procedure 1033, any party may amend its pleading by stipulation of the other parties or by leave of court. Pennsylvania Rule of Civil Procedure 1033 states as follows:

A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

Pa.R.Civ.P. 1033.

Roemer has refused to stipulate to permit CPG to amend its complaint as a matter of course. Therefore, CPG seeks leave of this Court to file an amendment to its complaint.

Under Rule 1033, the amendment of pleadings should be allowed with great liberality at any stage of a proceeding unless it constitutes surprise which results in prejudice to an adverse party. *See Robinson Protective Alarm Co. v. Bolger & Picker*, 512 Pa. 116, 120, 516 A.2d 299, 301 (1986). The general rule is that a party must establish more than undue delay to overcome Pennsylvania's liberal amendment policy. *See Borough of Mifflinburg v. Heim*, 705 A.2d 456, 463 (Pa. Super. 1997) (citing *Carpitella v. Consolidated Rail Corp.*, 368 Pa. Super. 153, 157, 533 A.2d 762, 764 (1987)).

Although leave to amend a pleading may be denied where the granting of the amendment would be unduly prejudicial to the rights of the opposing party, the test to determine whether such a request should be denied is whether the amendment would deprive the opposing party of any substantial or valuable right beyond that which normally flows from the allowance of the amendment. *See Pilotti v. Mobil Oil Corp.*, 565 A.2d 1227, 1229 (Pa. Super. 1989)(abuse of

discretion for court to deny defendant's request to amend answer and then enter judgment on pleadings in favor of plaintiff); *see also Robinson Protective Alarm Co. v. Bolger & Picker*, 512 Pa. 116, 120, 516 A.2d 299, 302 (1986)(trial court may not deny party leave to amend unless unfair surprise or some comparable prejudice will result from amendment); *Brooks v. McMenamin*, 349 Pa. Super. 436, 503 A.2d 446 (1986)(timeliness of request to amend is factor to be considered only insofar as it presents a question of prejudice to opposing party, such as by loss of witness or eleventh hour surprise).

Defendants are hard pressed to establish any surprise or prejudice, considering that Roemer and his counsel have been on notice since the filing of CPG's Complaint that CPG viewed Roemer to be in breach of his Employment Contract and that he would be responsible for all resulting damages from the termination of his employment. Roemer and his counsel have long been familiar with the provisions of his Employment Contract and the possibility that Clearfield Hospital would seek recovery of the income guarantee amounts paid to CPG, as well as the fact that CPG would then in turn seek indemnification from Roemer. In fact, this was clearly an area of enquiry from Roemer's counsel during the discovery in this case. Within weeks of receiving notice of Clearfield Hospital's demand, CPG promptly notified Roemer's counsel of the demand and asserted a claim for this amount. Roemer acknowledged the claim and responded accordingly in his response to CPG's motion for summary judgment. Therefore, Roemer would not be prejudiced by CPG amending its Complaint at this time.

In addition, because Clearfield Hospital only recently made its demand for CPG to repay the subsidized income guarantee payments provided by Clearfield Hospital to CPG, the Amendment is being sought well within the four-year statute of limitations that would apply to CPG's claims against Roemer, in the event CPG desired to bring a separate breach of contract



action against Roemer. The statute of limitations for this breach of contract action against Roemer is four years pursuant to 42 Pa.C.S.A. § 5525. This further supports CPG's ability to file its proposed Amendment to Complaint. *See American Motorists Insurance Company v. Farmers Bank and Trust Co. of Hanover*, 435 Pa. Super. 54, 644 A.2d 1232 (1994)(amendment to petition for declaratory judgment would be allowed, notwithstanding that it set out new cause of action, since statute of limitations had not expired); *see also Bata v. Central – Penn National Bank of Philadelphia*, 448 Pa. 355, 380, 293 A.2d 343, 357 (1972)(motion to amend complaint was permitted where statute of limitations for new claims had not yet expired and judicial efficiency and economy were served by allowing amendment). CPG was clearly unable to assert this claim against Roemer prior to Clearfield Hospital's demand for repayment of the income guarantee amount in September of 2003. Had CPG attempted to assert this claim prior to that time, Roemer would surely have attacked it as being premature and speculative.


Because the proposed Amendment falls well within the statute of limitations, and Roemer will not be prejudiced by CPG's filing of its Amendment to Complaint, there should be little question that the Amendment is permissible under Rule 1033. As such, there does not exist any legitimate grounds for the Court to deny CPG's requested Amendment.

**V. CONCLUSION**

For the foregoing reasons, CPG respectfully requests that this Court grant its Petition for Permission to File Amendment to Complaint and grant it leave to file its Amendment to Complaint.

Respectfully submitted,

**DATED:** February 24, 2004

  
\_\_\_\_\_  
William L. Stang  
Pa. ID # 33221  
Carl J. Rychcik  
Pa. ID # 73754  
FOX ROTHSCHILD LLP  
625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222  
412-391-1334

Attorneys for Clearfield Professional Group, Ltd.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Brief in Support of Petition for Permission to File Amendment to Complaint was served upon the following individual by first class U.S. Mail this 24th day of February, 2004:

Jason Mettley, Esq.  
Jubelirer, Pass & Intrieri, P.C.  
219 Fort Pitt Boulevard  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
Carl J. Rychcik