

05-1114-CD

DuBois Medical Supply vs Russell Thomas
2005-1114-CD

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

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff

vs.

RUSSELL N. THOMAS,
Defendant

No. 05-1114-CD

Type of Pleading:

COMPLAINT IN EQUITY

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Date: _____

FILED ICC Shff
018:4384 ICC Atty
AUG 02 2005 um
William A. Shaw Atty pd 85.00
Prothonotary/Clerk of Courts

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

DUBOIS MEDICAL SUPPLY, :
COMPANY, INC., :
Plaintiff :
vs. : No. _____, 2005, C.D.
RUSSELL N. THOMAS, :
Defendant :
:

NOTICE

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 defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed 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.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

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

DUBOIS MEDICAL SUPPLY, :
COMPANY, INC., :
Plaintiff :
vs. : No. _____, 2005, C.D.
RUSSELL N. THOMAS, :
Defendant :
.

COMPLAINT IN EQUITY

AND NOW, comes the Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., by and through their attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof aver the following:

1. Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office located at 320 Liberty Blvd., DuBois, Clearfield County, Pennsylvania.
2. The Defendant, RUSSELL N. THOMAS, is an adult individual who has a mailing address of 1740 Brighton Road, Ellwood City, Lawrence County, Pennsylvania.

COUNT I

3. Paragraphs 1 and 2 are incorporated herein by reference as though the same were set forth more fully at length.

4. Venue in this court is proper under Pa.R.C.P. 1006, 2130 and 2179(a) in that the Plaintiff's principal place of business is located in the City of DuBois, Clearfield County, Pennsylvania.

5. Defendant was employed by the Plaintiff on or about February 26, 2003, and was assigned by the Plaintiff to act as a location manager in the business known as Ellwood Respiratory Care which the Plaintiff operates under a duly filed fictitious name.

6. Pursuant to his employment, Defendant executed an Agreement dated February 26, 2003, which is fully supported by adequate consideration. A true and correct copy of said Agreement is attached hereto and marked as Exhibit "A".

7. Throughout his employment, Defendant has acted as a location manager as previously averred.

8. On or about the 23rd day of June, 2005, the Defendant resigned his position with the Plaintiff and in turn accepted employment with John C. Rezk, trading and doing business as Rezk Medical Supply with offices in Carrolltown in Cambria County and Beaver in Beaver County, Pennsylvania.

9. Said Agreement dated February 26, 2003, copy of which is attached hereto as Exhibit "A", provides in part that throughout the term of his employment and that for a period of one year thereafter, within a territory of 40 miles in radius of any present or future offices

or location of Plaintiff, Defendant agreed to not individually or in conjunction with any other person or as an employee, agent, representative or partner or holder of any interest in any firm, corporation or other association engage in any business which would be in competition with the Plaintiff's business.

10. In violation of Section 4, entitled "Restrictions Against Competition" since his resignation on June 23, 2005, the Defendant, engaged in employment and activities related to the employment with John C. Rezk, trading as Rezk Medical Supply in violation of said agreement dated February 26, 2003, a copy of which is attached hereto and marked Exhibit "A".

11. Should the Court grant injunctive relief to Plaintiff, Defendant will incur little, if any, injury for which injury he has adequate remedies at law. The balance of equities therefore favor Plaintiff.

12. In addition to injunctive relief, hearing requested, the Plaintiff further requests that your Honorable Court enter judgment in the amount of the attorney's fees and costs expended by the Plaintiff in prosecuting this action pursuant to Subsection (b) of Paragraph 5, entitled "Remedies of Said Agreement" dated February 27, 2003.

13. Plaintiff also seeks an Order pursuant to Pa.R.C.P. 115.31 preliminary and permanently enjoining Defendant from violating the covenants of said Agreement dated February 26, 2003.

14. If required by the Court, Plaintiff will deposit money or bond with the Court in whatever amount the Court may determine is just for

security. It is believed that only irreparable harm that would be caused to the Plaintiff since the Defendant is engaging in activities in competition with Plaintiff's business and in violation of said agreement dated February 26, 2003. Thus the amount of any security bond should be merely nominal.

15. Should the Court not grant injunctive relief, the Plaintiff believes and therefore avers that it will incur great and irreparable harm and damage from the permanent loss due to Defendant's violations of the terms and conditions of said Agreement dated February 26, 2003.

WHEREFORE, Plaintiff requests that this Court enter an Order:

- (a) Permanently enjoining Defendant from violating the terms of said Agreement dated February 26, 2003;
- (b) Enjoin Defendant from competing with Plaintiff in the business of the Plaintiff for a period of one year in the protected territory as provided for by said agreement dated February 26, 2003;
- (c) Award Plaintiff's costs incurred as a result of Defendant's wrongful act;
- (d) Awarding Plaintiff reasonable attorney's fees for prosecuting this action;
- (e) Providing such other relief as the Court deems just and proper.

COUNT II

Unjust Enrichment

16. Paragraphs 1 through 15 are incorporated herein by reference as though the same were set forth more fully at length.

17. As a result of Defendant competing with Plaintiff in violation of said Agreement dated February 26, 2003, such actions will confer upon Defendant benefits which are unjust to the detriment of Plaintiff.

18. Defendant's actions constitute an unjust retention of a benefit to the loss of the Plaintiff will cause Plaintiff to suffer serious financial injury and inequities as a result that have or probably will in the future result in substantial damages.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount Defendant has received as a result of Defendant's wrongful acts as set forth in the Count I of this Complaint.



Anthony S. Guido
Attorney for Plaintiffs

VERIFICATION

I, PAUL K. REZK, President of DuBOIS MEDICAL SUPPLY COMPANY, INC., do hereby state that I am the authorized agent for purposes of filing this Complaint. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 7-28-05



Paul K. Rezk, President

AGREEMENT

THIS AGREEMENT, made this 27 day of FEBRUARY, 2003, by and between DUBOIS MEDICAL SUPPLY, INC., a business corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with an office and place of business at 405 East Sheridan Avenue, DuBois, Pennsylvania, party of the first part, hereinafter referred to as the "COMPANY"

-AND-

Kathryn Silvester of Beaver Falls, Pa. Beaver County Pennsylvania, party of the second part, hereinafter referred to as "EMPLOYEE".

1. Identification of Parties. Whenever in this Agreement the terms "you" or "your" are used, reference is being made to you, the Employee. Whenever the term "Company" is used, reference is being made to DuBois Medical Supply, Inc., and all of its successors and assigns.

2. Consideration for Agreement. In consideration of your employment as a Customer Service Rep and the agreed-upon compensation, the sufficiency of which you hereby acknowledge, you agree to all of the terms and conditions contained in this Agreement.

As additional consideration for this Agreement, Employee acknowledges being a new hired employee or if a present employee, a compensation increase.

3. Agreement Not to Disclose Confidential Information.

(a) You acknowledge that the following items (collectively referred to as "confidential information") used in the Company's business are secret, confidential, unique, and valuable, were developed by the Company at great cost and over a long period of time, and that disclosure or use of the Company's confidential information to or by anyone other than the Company's officers, agents, or authorized employees will cause company irreparable injury. The Company's confidential information includes:

(i) Client lists, prospect call lists, and other customer data;

(ii) Price lists, vendor lists, computer printouts, account receivable reports, revenue reports and similar financial information;

(iii) Proposals, contracts, leases, rental agreements, and marketing information;

(iv) Employee lists; and

(v) Such other Company information designated as confidential, proprietary, and/or trade secret to which you gain access during your employment.

(b) Except as required in the performance of your duties as an Employee of the Company, you agree not to disclose to anyone the Company's confidential information, whether such information is developed before or after the date of this Agreement.

(c) The restrictions against disclosure contained in this Agreement apply during and after your employment with the Company.

(d) The restrictions against disclosure contained in this Agreement also apply to confidential information developed by you while employed by the Company.

(e) Upon termination of your employment for any reason, you will promptly deliver to the Company all tangible objects containing confidential information, including all copies thereof, whether prepared by you or others, that you possess or have under your control.

4. Restrictions Against Competition.

(a) You agree that throughout the term of your employment with the Company and for a period of 1 years thereafter, within a territory of 40 miles in radius, of any present or future offices or locations of the Company, you will not, individually or in conjunction with any other person, or as an employee, agent, representative, partner, or holder of any interest in any other person, firm, corporation, or other association:

(i) Solicit, entice, induce any person, firm, or corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a client or customer of any other person, firm, or corporation, or other association;

(ii) Authorize or direct any person, firm, or corporation to solicit, entice or induce any person, firm or

corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a customer of any other person, firm or corporation, or other association;

(iii) Solicit, entice, or induce any person who presently is or at any time during your employment with the Company will be, an employee of the Company, to become employed by any other person, firm, corporation, or other association, and you shall not approach any such employee for such purpose or authorize or direct the taking of such actions by any other person;

(iv) Directly or indirectly solicit, participate in, or accept business similar to any aspect of the Company's business from any person, firm, or other association, who or which was a customer or prospect of the Company during your employment with the Company and with whom you had business contact while employed by the Company, "Business Contact" for these purposes shall include your telephonic, written and/or face to face business communication with representatives of the customer or prospect.

Nothing in the foregoing shall prohibit you, after termination of your employment with the Company from engaging in any business that is not in competition with the Company. At no time during or after your employment by the Company shall you be prohibited from investing in the securities of any corporation having securities listed on a national security exchange, provided that such investment does not exceed five percent of any class of securities of any corporation engaged in business in competition with the Company, and provided

that such ownership represents a passive investment and that neither you nor any group of persons including you, in any way, either directly or indirectly, manages or exercises control over any such corporation, guarantees any of its financial obligations, or otherwise takes part in its business, except in the exercise of your rights as a shareholder.

5. Remedies.

(a) You acknowledge that the restrictions contained in this Agreement are reasonable and necessary in view of the nature of the Company's businesses and in order to protect the legitimate business interests of the Company. You further acknowledge that your violation of the restrictions, or any of them, would result in irreparable injury to the Company. Therefore, you agree that, in the event of a breach or threatened breach by you of the provisions of Paragraphs 3 or 4 of this Agreement, the Company shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief restraining you from any violation of Paragraphs 3 or 4 of this Agreement.

(b) You further agree that if the Company institutes legal action to enforce any provision of this Agreement, you will pay the Company's attorney's fees and litigation costs incurred in enforcing the Agreement.

(c) Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for a breach or threatened breach of this Agreement.

(d) The parties acknowledge their intention that the Company shall have the broadest possible protection of the value of the Company's business, consistent with public policy. Should a court determine that the durational or geographical restrictions on post-employment competition are broader than public policy allows, the parties agree to accept whatever the court (duration or geographic scope) finds to be permissible under public policy.

6. Survival. The provisions of Paragraphs 3, 4, and 5 shall survive the termination of your employment, regardless of the reason for termination.

7. Miscellaneous.

(a) This Agreement cancels and supersedes any and all prior agreements and understandings between or among you and the Company with respect to your employment with the Company. This Agreement may not be modified in any respect except in a writing signed by the parties hereto.

(b) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, except that your duties and responsibilities hereunder are of a personal nature and shall not be assignable or delegatable, in whole or in part, by you.

8. Severability. In the event that any provision(s) of this Agreement are deemed invalid, unreasonable or unenforceable by any court of competent jurisdiction, such provision(s) shall be stricken

from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement or the modified provision as provided above shall continue in full force and effect and be binding upon the parties.

9. Controlling Law. The validity, interpretation, construction, performance, and enforcement of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above the day and year first above written.

WITNESSES:

J. L. H.

EMPLOYEE:

Kathryn J. Silvester (SEAL)

Attest:

Janet McRae
Secretary

DUBOIS MEDICAL SUPPLY
INC., by:

Paul H.
President

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100700
NO: 05-1114-CD
SERVICE # 1 OF 1
COMPLAINT IN EQUITY

PLAINTIFF: DUBOIS MEDICAL SUPPLY COMPANY, INC.
vs.
DEFENDANT: RUSSELL N. THOMAS

SHERIFF RETURN

NOW, August 04, 2005, SHERIFF OF LAWRENCE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN EQUITY ON RUSSELL N. THOMAS.

NOW, August 12, 2005 ATTEMPTED TO SERVE THE WITHIN COMPLAINT IN EQUITY ON RUSSELL N. THOMAS, DEFENDANT. THE RETURN OF LAWRENCE COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN MARKED "NOT FOUND".

FILED

DEC 16 2005
0/21/05
William A. Shaw
Prothonotary/Clerk of Courts


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100700
NO: 05-1114-CD
SERVICES 1
COMPLAINT IN EQUITY

PLAINTIFF: DUBOIS MEDICAL SUPPLY COMPANY, INC.

vs.

DEFENDANT: RUSSELL N. THOMAS

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HANAK	14302	10.00
SHERIFF HAWKINS	HANAK	14302	30.00
LAWRENCE CO.	HANAK	14303	33.50

Sworn to Before Me This

So Answers,

____ Day of _____ 2005



Chester A. Hawkins
Sheriff

ROBERT L. CLARK, SHERIFF

Lawrence County
Office of Sheriff



PHONE (724) 652-5121

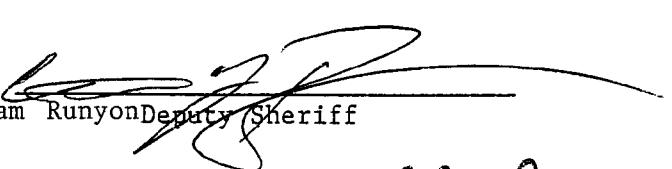
430 COURT ST. NEW CASTLE, PA 16101-3593

RETURN NOT FOUND

Dubois Medical Supply Company, PlaintiffNo. 05-1114-CDInc.VS.Russell N. Thomas Defendant

William Runyon, Deputy Sheriff, after making a diligent search and inquiry states that he/she was unable to find Russell N. Thomas the defendant therein named, after having made inquiry at 1740 Brighton Rd., Ellwood City, PA the last known residence and whereabouts of the defendant. Attempted service August 12, 2005 at 3:05 P.M.

Reason: Above address is in Beaver County

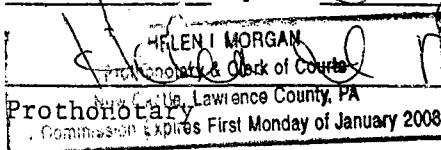


William Runyon Deputy Sheriff



Robert L. Clark

Sworn and subscribed before me this
13th day of August 2005



Sheriff's Costs: \$33.50

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

DUBOIS MEDICAL SUPPLY
COMPANY, INC.,

Plaintiff

vs.

RUSSELL N. THOMAS,
Defendant

No. 05-1114-CD

Type of Pleading:

COMPLAINT IN EQUITY

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Date: _____

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

AUG 02 2005

Attest:

John L. Rau
Prothonotary/
Clerk of Courts

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

DUBOIS MEDICAL SUPPLY, :
COMPANY, INC., :
Plaintiff :
: No. _____, 2005, C.D.
vs. :
: RUSSELL N. THOMAS, :
Defendant :
:

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DUBOIS MEDICAL SUPPLY, :
COMPANY, INC., :
Plaintiff :
vs. : No. _____, 2005, C.D.
RUSSELL N. THOMAS, :
Defendant :
:

COMPLAINT IN EQUITY

AND NOW, comes the Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., by and through their attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof aver the following:

1. Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office located at 320 Liberty Blvd., DuBois, Clearfield County, Pennsylvania.
2. The Defendant, RUSSELL N. THOMAS, is an adult individual who has a mailing address of 1740 Brighton Road, Ellwood City, Lawrence County, Pennsylvania.

COUNT I

3. Paragraphs 1 and 2 are incorporated herein by reference as though the same were set forth more fully at length.
4. Venue in this court is proper under Pa.R.C.P. 1006, 2130 and 2179(a) in that the Plaintiff's principal place of business is located in the City of DuBois, Clearfield County, Pennsylvania.
5. Defendant was employed by the Plaintiff on or about February 26, 2003, and was assigned by the Plaintiff to act as a location manager in the business known as Ellwood Respiratory Care which the Plaintiff operates under a duly filed fictitious name.
6. Pursuant to his employment, Defendant executed an Agreement dated February 26, 2003, which is fully supported by adequate consideration. A true and correct copy of said Agreement is attached hereto and marked as Exhibit "A".
7. Throughout his employment, Defendant has acted as a location manager as previously averred.
8. On or about the 23rd day of June, 2005, the Defendant resigned his position with the Plaintiff and in turn accepted employment with John C. Rezk, trading and doing business as Rezk Medical Supply with offices in Carrolltown in Cambria County and Beaver in Beaver County, Pennsylvania.
9. Said Agreement dated February 26, 2003, copy of which is attached hereto as Exhibit "A", provides in part that throughout the term of his employment and that for a period of one year thereafter, within a territory of 40 miles in radius of any present or future offices

or location of Plaintiff, Defendant agreed to not individually or in conjunction with any other person or as an employee, agent, representative or partner or holder of any interest in any firm, corporation or other association engage in any business which would be in competition with the Plaintiff's business.

10. In violation of Section 4, entitled "Restrictions Against Competition" since his resignation on June 23, 2005, the Defendant, engaged in employment and activities related to the employment with John C. Rezk, trading as Rezk Medical Supply in violation of said agreement dated February 26, 2003, a copy of which is attached hereto and marked Exhibit "A".

11. Should the Court grant injunctive relief to Plaintiff, Defendant will incur little, if any, injury for which injury he has adequate remedies at law. The balance of equities therefore favor Plaintiff.

12. In addition to injunctive relief, hearing requested, the Plaintiff further requests that your Honorable Court enter judgment in the amount of the attorney's fees and costs expended by the Plaintiff in prosecuting this action pursuant to Subsection (b) of Paragraph 5, entitled "Remedies of Said Agreement" dated February 27, 2003.

13. Plaintiff also seeks an Order pursuant to Pa.R.C.P. 115.31 preliminary and permanently enjoining Defendant from violating the covenants of said Agreement dated February 26, 2003.

14. If required by the Court, Plaintiff will deposit money or bond with the Court in whatever amount the Court may determine is just for

security. It is believed that only irreparable harm that would be caused to the Plaintiff since the Defendant is engaging in activities in competition with Plaintiff's business and in violation of said agreement dated February 26, 2003. Thus the amount of any security bond should be merely nominal.

15. Should the Court not grant injunctive relief, the Plaintiff believes and therefore avers that it will incur great and irreparable harm and damage from the permanent loss due to Defendant's violations of the terms and conditions of said Agreement dated February 26, 2003.

WHEREFORE, Plaintiff requests that this Court enter an Order:

- (a) Permanently enjoining Defendant from violating the terms of said Agreement dated February 26, 2003;
- (b) Enjoin Defendant from competing with Plaintiff in the business of the Plaintiff for a period of one year in the protected territory as provided for by said agreement dated February 26, 2003;
- (c) Award Plaintiff's costs incurred as a result of Defendant's wrongful act;
- (d) Awarding Plaintiff reasonable attorney's fees for prosecuting this action;
- (e) Providing such other relief as the Court deems just and proper.

COUNT II

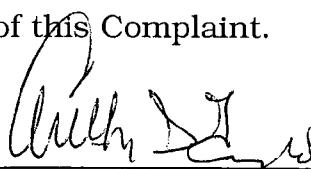
Unjust Enrichment

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17. As a result of Defendant competing with Plaintiff in violation of said Agreement dated February 26, 2003, such actions will confer upon Defendant benefits which are unjust to the detriment of Plaintiff.

18. Defendant's actions constitute an unjust retention of a benefit to the loss of the Plaintiff will cause Plaintiff to suffer serious financial injury and inequities as a result that have or probably will in the future result in substantial damages.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount Defendant has received as a result of Defendant's wrongful acts as set forth in the Count I of this Complaint.



Anthony S. Guido
Attorney for Plaintiffs

VERIFICATION

I, PAUL K. REZK, President of DuBOIS MEDICAL SUPPLY COMPANY, INC., do hereby state that I am the authorized agent for purposes of filing this Complaint. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 7-28-05



Paul K. Rezk, President

AGREEMENT

THIS AGREEMENT, made this 27 day of FEBRUARY,
2003, by and between DUBOIS MEDICAL SUPPLY, INC., a business
corporation, organized and existing under the laws of the
Commonwealth of Pennsylvania, with an office and place of business at
405 East Sheridan Avenue, DuBois, Pennsylvania, party of the first
part, hereinafter referred to as the "COMPANY"

-AND-

Kathryn Silvester of Beaver Falls, Pa. Beaver County
Pennsylvania, party of the second part, hereinafter referred to as
"EMPLOYEE".

1. Identification of Parties. Whenever in this Agreement the
terms "you" or "your" are used, reference is being made to you, the
Employee. Whenever the term "Company" is used, reference is being
made to DuBois Medical Supply, Inc., and all of its successors and
assigns.

2. Consideration for Agreement. In consideration of your
employment as a Customer Service Rep and the agreed-upon
compensation, the sufficiency of which you hereby acknowledge, you
agree to all of the terms and conditions contained in this Agreement.

As additional consideration for this Agreement, Employee
acknowledges being a new hired employee or if a present employee, a
compensation increase.

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(a) You acknowledge that the following items (collectively referred to as "confidential information") used in the Company's business are secret, confidential, unique, and valuable, were developed by the Company at great cost and over a long period of time, and that disclosure or use of the Company's confidential information to or by anyone other than the Company's officers, agents, or authorized employees will cause company irreparable injury. The Company's confidential information includes:

- (i) Client lists, prospect call lists, and other customer data;
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(b) Except as required in the performance of your duties as an Employee of the Company, you agree not to disclose to anyone the Company's confidential information, whether such information is developed before or after the date of this Agreement.

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4. Restrictions Against Competition.

(a) You agree that throughout the term of your employment with the Company and for a period of 1 years thereafter, within a territory of 40 miles in radius, of any present or future offices or locations of the Company, you will not, individually or in conjunction with any other person, or as an employee, agent, representative, partner, or holder of any interest in any other person, firm, corporation, or other association:

(i) Solicit, entice, induce any person, firm, or corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a client or customer of any other person, firm, or corporation, or other association;

(ii) Authorize or direct any person, firm, or corporation to solicit, entice or induce any person, firm or

which at any time during your employment with
customer of the Company, to become a customer of
firm or corporation, or other association;

(iii) Solicit, entice, or induce any person who
or at any time during your employment with the Company
a employee of the Company, to become employed by any
person, firm, corporation, or other association, and you shall not
coach any such employee for such purpose or authorize or direct
the taking of such actions by any other person;

(iv) Directly or indirectly solicit, participate in, or
accept business similar to any aspect of the Company's business from
any person, firm, or other association, who or which was a customer
or prospect of the Company during your employment with the
Company and with whom you had business contact while employed by
the Company, "Business Contact" for these purposes shall include your
telephonic, written and/or face to face business communication with
representatives of the customer or prospect.

Nothing in the foregoing shall prohibit you, after termination of
your employment with the Company from engaging in any business
that is not in competition with the Company. At no time during or
after your employment by the Company shall you be prohibited from
investing in the securities of any corporation having securities listed
on a national security exchange, provided that such investment does
not exceed five percent of any class of securities of any corporation
engaged in business in competition with the Company, and provided

corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a customer of any other person, firm or corporation, or other association;

(iii) Solicit, entice, or induce any person who presently is or at any time during your employment with the Company will be, an employee of the Company, to become employed by any other person, firm, corporation, or other association, and you shall not approach any such employee for such purpose or authorize or direct the taking of such actions by any other person;

(iv) Directly or indirectly solicit, participate in, or accept business similar to any aspect of the Company's business from any person, firm, or other association, who or which was a customer or prospect of the Company during your employment with the Company and with whom you had business contact while employed by the Company. "Business Contact" for these purposes shall include your telephonic, written and/or face to face business communication with representatives of the customer or prospect.

Nothing in the foregoing shall prohibit you, after termination of your employment with the Company from engaging in any business that is not in competition with the Company. At no time during or after your employment by the Company shall you be prohibited from investing in the securities of any corporation having securities listed on a national security exchange, provided that such investment does not exceed five percent of any class of securities of any corporation engaged in business in competition with the Company, and provided

that such ownership represents a passive investment and that neither you nor any group of persons including you, in any way, either directly or indirectly, manages or exercises control over any such corporation, guarantees any of its financial obligations, or otherwise takes part in its business, except in the exercise of your rights as a shareholder.

5. Remedies.

(a) You acknowledge that the restrictions contained in this Agreement are reasonable and necessary in view of the nature of the Company's businesses and in order to protect the legitimate business interests of the Company. You further acknowledge that your violation of the restrictions, or any of them, would result in irreparable injury to the Company. Therefore, you agree that, in the event of a breach or threatened breach by you of the provisions of Paragraphs 3 or 4 of this Agreement, the Company shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief restraining you from any violation of Paragraphs 3 or 4 of this Agreement.

(b) You further agree that if the Company institutes legal action to enforce any provision of this Agreement, you will pay the Company's attorney's fees and litigation costs incurred in enforcing the Agreement.

(c) Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for a breach or threatened breach of this Agreement.

(d) The parties acknowledge their intention that the Company shall have the broadest possible protection of the value of the Company's business, consistent with public policy. Should a court determine that the durational or geographical restrictions on post-employment competition are broader than public policy allows, the parties agree to accept whatever the court (duration or geographic scope) finds to be permissible under public policy.

6. Survival. The provisions of Paragraphs 3, 4, and 5 shall survive the termination of your employment, regardless of the reason for termination.

7. Miscellaneous.

(a) This Agreement cancels and supersedes any and all prior agreements and understandings between or among you and the Company with respect to your employment with the Company. This Agreement may not be modified in any respect except in a writing signed by the parties hereto.

(b) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, except that your duties and responsibilities hereunder are of a personal nature and shall not be assignable or delegatable, in whole or in part, by you.

8. Severability. In the event that any provision(s) of this Agreement are deemed invalid, unreasonable or unenforceable by any court of competent jurisdiction, such provision(s) shall be stricken

from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement or the modified provision as provided above shall continue in full force and effect and be binding upon the parties.

9. Controlling Law. The validity, interpretation, construction, performance, and enforcement of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above the day and year first above written.

WITNESSES:

John H. Miller

EMPLOYEE:

Kathryn J. Silvester (SEAL)

Attest:

Karen M. Ray
Secretary

DUBOIS MEDICAL SUPPLY
INC., by:

Paul H.
President

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DuBOIS MEDICAL SUPPLY : No. 05-1114-CD
COMPANY, INC., :
Plaintiff :
-vs- : Type of Case: Civil Action
RUSSELL N. THOMAS, : Type of Pleading: Praecep
Defendant : Filed on Behalf of: Plaintiff
: Counsel of Record for This
: Party:
: Anthony S. Guido, Esq.
: Supreme Court No. 05877
: Hanak, Guido and Taladay
: P.O. Box 487
: DuBois, PA 15801
: (814) 371-7768

7/11/2006
m/11:15am NoCC
JUL 12 2006 Cert of disc
issued to Atty
Guido
William A. Shaw Cpy to C/A
Prothonotary

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

DuBOIS MEDICAL SUPPLY	:	
COMPANY, INC.	:	
Plaintiffs	:	
	:	
-vs-	:	No. 05-1114-CD
	:	
RUSSELL N. THOMAS,	:	
Defendant	:	

PRAECIPE FOR DISCONTINUANCE

TO WILLIAM SHAW, PROTHONOTARY OF SAID COURT:

Please mark the above case settled, discontinued and ended.



Anthony S. Guido
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

DuBois Medical Supply Company, Inc.

Vs.
Russell N. Thomas

No. 2005-01114-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 21, 2006, marked:

Settled, discontinued and ended

Record costs in the sum of \$85.00 have been paid in full by Anthony S. Guido Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 21st day of July A.D. 2006.



William A. Shaw, Prothonotary