



## **I. FINDINGS OF FACT**

### **A. The Parties**

1. Dr. Tambay is an adult individual residing at 27060 Cedar Road, PH #8, Beachwood, OH 44122. Dr. Tambay, at all times relevant to this dispute, was a physician licensed to practice in Pennsylvania. Pl. Proposed Findings of Fact/Def. Resp. (“Agreed Findings”) at ¶ A.1.

2. Dr. Tambay is a citizen of India. Agreed Findings at ¶ A.2.

3. Dr. Peer is a resident of the Commonwealth of Pennsylvania and resides at 2300 Deer Path Road, Huntingdon Valley, PA 19006, and is an officer (President) of Peer PC. Agreed Findings at ¶ A.5.

4. Peer PC is a Pennsylvania professional corporation and a citizen of the Commonwealth of Pennsylvania, having a principal place of business at 9701 Bustleton Avenue, Philadelphia, PA 19115. Agreed Findings at ¶ A.3.

5. At all times relevant to this dispute, Peer PC was in the business of providing, *inter alia*, physical medicine, rehabilitation, and primary care services to patients at medical care facilities located both inside and outside federally-designated Medically Underserved Areas (“MUAs”) in Pennsylvania. Agreed Findings at ¶ A.4.

### **B. Dr. Tambay’s Immigration Status and the J-1 Waiver Program**

1. Dr. Tambay entered the United States in August 1990 on a student visa to pursue his medical studies. Between 1992 and 1998, Dr. Tambay held a J-1 visa and received medical training and education in the United States. Agreed Findings at ¶ B.1.

2. As a holder of a J-1 visa, Dr. Tambay was subject to a federal statute that, absent a waiver, would have required Dr. Tambay to leave the United States for a period of two years following the completion of his medical training and education. Agreed Findings at ¶ B.2.

3. Dr. Tambay could obtain a waiver of the two-year foreign residency requirement if he, through a sponsor, applied for such a waiver to the Pennsylvania Department of Health (“DOH”), and if Dr. Tambay met certain other requirements. Agreed Findings at ¶ B.3.

4. These other requirements for the waiver included showing that: (1) Dr. Tambay had a bona fide offer of full-time employment at a healthcare facility; (2) such employment would be in the public interest; (3) such employment would commence within ninety days of approval by the United States Immigration and Naturalization Service (“INS”)<sup>3</sup> of the Foreign Residency Waiver; and (4) Dr. Tambay would remain in that position for a period of at least three years. Agreed Findings at ¶ B.4.

5. Dr. Tambay was also required to commit to providing his services at MUA facilities for forty hours per week for a minimum of three years. Agreed Findings at ¶ B.5.

6. Dr. Tambay introduced Dr. Peer and her husband, Devendra Peer (“Mr. Peer”), to the State 20 Program and the J-1 visa residency waiver. At all times relevant to this dispute, Mr Peer, an accountant and the Executive Director of Peer PC, handled much of the practice’s business matters. Mr. Peer Test.; Dr. Tambay Test.

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<sup>3</sup> On March 1, 2003, the INS was transferred from the United States Department of Justice to the newly-created United States Department of Homeland Security. INS responsibilities have since been divided between two main components of the Homeland Security Department – the Directorate of Border and Transportation Security and the United States Citizenship and Immigration Services (“USCIS”). The USCIS is now responsible for approving foreign residency waivers.

7. The State 20 Program is designed to ensure that persons who reside in MUAs receive access to quality health care despite their economic situations by supplying these areas with international medical graduates who would otherwise be required to leave the United States after completion of their medical education and to recommend to the INS waivers of the J-1 visa residency requirement. Agreed Findings at ¶ B.7.

8. Constance Hanna (“Ms. Hanna”), the Public Health Program Administrator for the DOH who, at all times relevant to this dispute, managed the State 20 Program, explained the rules of the program to Mr. Peer in June or July of 1998. Hanna Test.; Mr. Peer Test.

9. Mr. Peer filled out all of the forms required for Dr. Tambay’s application for the State 20 Program and the J-1 visa residency waiver. Mr. Peer Test.; Dr. Tambay Test.

C. The Employment Agreement and INS Approval

1. On November 5, 1998, Dr. Tambay and Peer PC entered into a written Physician Employment Agreement (“the Employment Agreement”). Agreed Findings at ¶ C.1; Pl. Exh. 8.

2. The purpose of the Employment Agreement, *inter alia*, was to satisfy the DOH and INS requirements, including but not limited to the requirement that Dr. Tambay work forty hours per week in MUAs for a period of at least three years and to secure for Dr. Tambay a waiver of the J-1 visa residency requirement. Agreed Findings at ¶ C.2.

3. The Employment Agreement provided that:

- a. Peer PC is organized for the purpose of providing physical medicine and rehabilitation and primary care services to patients at 2040 E. Allegheny Avenue and 2830 N. Fifth Street, Philadelphia,

PA (collectively “the Facilities”), which were located in Census Tract 178 and 175, respectively. Pl. Exh. 8 at Background ¶ 1.

- b. Peer PC employed Dr. Tambay to provide services at the Facilities. Pl. Exh. 8 at Background ¶ 3.
- c. The term of the Employment Agreement was for five years commencing within ninety days from the date on which the INS approved Dr. Tambay to work and was not to end sooner than five years from the date Dr. Tambay actually began work. Pl. Exh. 8 at ¶ 2.
- d. Peer PC could terminate Dr. Tambay for cause upon 24 hours written notice of termination, provided that prior written notice of the breach was given and that Dr. Tambay was afforded fifteen days to cure such breach. Pl. Exh. 8 at ¶ 3.2.6.
- e. Unless otherwise directed by Peer PC, Dr. Tambay was to provide forty hours per week of patient services in MUAs and, in particular, Census Tracts 178 and 175. Exh. A to Pl. Exh. 8 at ¶ 1.
- f. Dr. Peer had sole discretion to set Dr. Tambay’s work schedule. Exh. A to Pl. Exh. 8 at ¶ 1.
- g. Dr. Tambay’s base salary was \$110,000 per year. Exh. B to Pl. Exh. 8 at ¶ 2.
- h. Dr. Tambay was to receive an “annual performance review resulting in a salary increase of a minimum of 10% over the base salary of the previous contract year.” Exh. B to Pl. Exh. 8 at ¶ 2.

4. At the time of Dr. Tambay's hiring, defendants represented to Dr. Tambay that there would be sufficient work to meet his forty-hour per week requirement. Dr. Tambay Test.

5. It was Dr. Tambay's idea, however, to make the term of the Employment Agreement five years in order to make his entire application more appealing to the DOH. Mr. Peer, after speaking with Ms. Hanna, had learned that the DOH would be more willing to approve the application of a physician who was willing to commit to more than the required three-year term. Mr. Peer Test.

6. Dr. Tambay began working for Peer PC on December 31, 1998. Dr. Tambay Test.

7. On April 25, 2000, the INS approved Dr. Tambay's petition for a foreign residency waiver and issued Dr. Tambay an H-1B visa, thereby permitting Dr. Tambay to work as a physician for Peer PC without the need to return to India for the two-year foreign residency ordinarily required of J-1 visa holders. Agreed Findings at ¶ C.4.

8. Thus, Dr. Tambay's three-year commitment to the MUAs would expire on or about April 25, 2003, but the Employment Agreement would extend longer. Pl. Exh. 8 at ¶ 2; Exh. B to Pl. Exh. 8 at ¶ 1.

D. The Facilities

1. As part of the effort to obtain Dr. Tambay's foreign residency waiver, on or about July 23, 1998, Peer PC filed site applications with the DOH for the Facilities, which were then approved by the DOH for the purpose of Dr. Tambay fulfilling his forty-hour requirement. Hanna Test.; Pl. Exh. 5; Agreed Findings at ¶ D.2.

2. Ms. Hanna was aware that Peer PC provided services at, and that Dr. Tambay would be working at, several hospitals located in MUAs or Health Professional Shortage Areas (“HPSAs”), including St. Joseph’s Hospital, Girard Medical Center, Temple University Hospital, and Albert Einstein Medical Center, all in Philadelphia. Def. Exh. 1.

3. In addition, Ms. Hanna stated that the DOH “may be willing, after a review of your additional documentation, **to allow a few extra hours** at” the previously mentioned hospitals in the MUAs and HPSAs. Def. Exh. 1.

4. Although Ms. Hanna eventually stated in a letter dated February 20, 2002 that Dr. Tambay’s hospital rounds would be counted as part of his forty-hour requirement, because Peer PC filed no site applications for any site other than the Facilities, no other facility was ever officially approved by the DOH. Pl. Exh. 23; Agreed Findings at ¶ D.3; Hanna Test.

E. Dr. Tambay’s Work Schedule and the Defendants’ Failure to Provide Forty Hours of Work Per Week in the MUAs

1. Both of the Facilities, as defined in the Employment Agreement, were located in MUAs. Agreed Findings at ¶ F.1.

2. Peer PC’s 2830 N. Fifth Street location closed in 1999, and its patients were transferred to the 2040 E. Allegheny Avenue location. Agreed Findings at ¶ F.2.

3. Dr. Peer and Peer PC set Dr. Tambay’s work schedule on a daily basis, and therefore controlled the facilities at which Dr. Tambay provided services. However, Dr. Tambay was to follow up with patients admitted to hospitals, and was to be on-call for Peer PC. Agreed Findings at ¶ F.3; Dr. Tambay Test.

4. Despite defendants’ contention that there was always sufficient work at the hospitals located in MUAs, defendants did not provide a work schedule for Dr. Tambay that

provided the requisite forty hours per week at the Facilities, which were the only sites specifically approved by the DOH. Dr. Tambay Test.

5. In October of 2001, while the Peers were in India, Dr. Tambay married his wife Anisha (“Mrs. Tambay”), an American citizen who was raised near Cleveland, OH, and contacted an immigration attorney in Philadelphia to determine whether Mrs. Tambay could sponsor him for a green card. Dr. Tambay Test.

6. The immigration attorney told Dr. Tambay that Mrs. Tambay could not sponsor him for the green card until Dr. Tambay completed the required three-year term for the foreign residency waiver. Dr. Tambay Test.

7. Dr. Tambay then talked to the immigration attorney about his work with Peer PC, and the immigration attorney told Dr. Tambay that the time he was working at Temple University Hospital, St. Joseph’s Hospital, Girard Medical Center, Northeastern Hospital, and Neumann Hospital did not count toward his forty-hour per week requirement. Dr. Tambay Test.

8. Concerned about whether he was satisfying his forty-hour per week requirement, Dr. Tambay then contacted Ms. Hanna, who told him that several of the hospitals at which he was working had to be approved before the time he worked there could be counted toward his required hours. Ms. Hanna also told Dr. Tambay that his on-call time did not count toward the required hours, and that Dr. Peer should contact Ms. Hanna regarding Dr. Tambay’s concerns. Nevertheless, by mid-December of 2001, Ms. Hanna had not heard from Dr. Peer.<sup>4</sup> Dr. Tambay Test.; Hanna Test.

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<sup>4</sup> Dr. Peer testified incredibly that Dr. Tambay never spoke to her regarding his concern that he was not meeting his forty-hour per week requirement.

9. Dr. Tambay sent Ms. Hanna a letter dated October 26, 2001, reiterating his concerns regarding whether he was satisfying his forty-hour requirement. Dr. Tambay Test.; Hanna Test.; Pl. Exh. 31.

10. At this time, due in part to the closure of Peer PC's N. Fifth Street office, the only officially approved site at which Dr. Tambay was working was 2040 E. Allegheny Avenue. He was not working forty hours per week at this site. Agreed Findings at ¶ F.6.

F. Dr. Tambay's November 2001 Termination

1. Upon returning from India in early November of 2001, Dr. Peer learned from her secretary that Dr. Tambay had not provided appropriate information concerning billing during the time Dr. Peer was away. Dr. Peer Test.

2. On or about November 6, 2001, Dr. Peer confronted Dr. Tambay about the billing issue and asked for his diaries, which were a record of the names of patients with whom Dr. Tambay consulted, when and where the consultations took place, and by whom the patient may have been referred. The diaries were not used for billing. Dr. Tambay Test.; Dr. Peer Test.

3. Dr. Tambay told Dr. Peer that he did not have his diaries even though he did. The two got into an argument, Dr. Peer stated, "If you don't want to work for me, leave," and Dr. Tambay did so.<sup>5</sup> Dr. Tambay Test.

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<sup>5</sup> Mr. Peer testified that he heard some of the conversation between Dr. Tambay and Dr. Peer on November 6, and that Dr. Tambay got angry and walked out without being told to leave by Dr. Peer. Dr. Peer testified that Dr. Tambay stated, "I quit," and walked out of the office. I find this testimony not to be credible. Dr. Tambay needed to continue his employment to maintain his immigration status and stay in the United States, Dr. Tambay showed a legitimate concern about his forty-hour requirement and about the fact that the Peers did not appropriately pursue the matter with Ms. Hanna, and Dr. Tambay immediately filed suit seeking reinstatement. In addition, defendants provided no credible evidence that Dr. Tambay was attempting to engineer a firing in order to move to Ohio with his new wife. This could have been a motive, but defendants failed to prove it.

4. Dr. Tambay returned to Peer PC's offices the next day to complete administrative work, but on November 8, 2001, when Dr. Tambay showed up to work, Mr. Peer told him, "It's too late, it's over. You're fired. Get out of the office." The Peers never again asked for the diaries. Dr. Tambay then contacted an attorney. Dr. Tambay Test.

5. No written notice of intent to fire for cause was given, nor was Dr. Tambay given fifteen days to cure any breach of the Employment Agreement. Dr. Tambay Test.

6. Thereafter, through his attorney, Dr. Tambay notified defendants in writing that he was ready, willing, and able to work, and demanded that defendants honor the terms of the Employment Agreement, reinstate Dr. Tambay, and permit Dr. Tambay to work.<sup>6</sup> Agreed Findings at ¶ G.3.

7. Defendants failed to comply with Dr. Tambay's demands for reinstatement. Agreed Findings at ¶ G.4.

8. On November 13, 2001, Dr. Tambay filed a complaint in the United States District Court for the Eastern District of Pennsylvania, entitled *Nishin Tambay, M.D. v. Meeta Peer, M.D., P.C.*, No. 01-5703. Agreed Findings at ¶ G.5.

9. At the same time, Dr. Tambay petitioned the court for a temporary restraining order and preliminary injunction, restraining Peer PC from refusing to reinstate Dr. Tambay and from terminating Dr. Tambay's employment under the Employment Agreement without cause. Agreed Findings at ¶ G.6.

10. During a conference before me on November 15, 2001, the parties settled the matter, and Peer PC agreed to reinstate Dr. Tambay. Agreed Findings at ¶ G.7.

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<sup>6</sup> Mr. Peer testified incredibly that he did not receive a letter from Dr. Tambay's lawyer during this time.

G. Defendants' Admission that They Could Not Provide the Necessary Forty Hours, Dr. Tambay's March 2002 Termination, and Dr. Tambay's Search for New Employment

1. On December 17, 2001, Ms. Hanna called and wrote to Dr. Peer regarding Dr. Tambay's concerns about his forty-hour requirement and requesting information from the Peers about the sites at which Dr. Tambay was providing services. From then through February of 2002, defendants corresponded several times with Ms. Hanna in an attempt to get Dr. Tambay into compliance. Dr. Peer Test.; Mr. Peer Test.; Hanna Test; Pl. Exh. 20.

2. However, despite Ms. Hanna's several requests for information, and her allowing defendants an extension of time in which to provide said information, defendants failed to submit site applications for any of the other locations where Dr. Tambay provided services.<sup>7</sup> Pl. Exh. 20; Pl. Exh. 21; Pl. Exh. 22; Pl. Exh. 23; Dr. Peer Test.; Hanna Test. The application process would have been more difficult than for the typical participants in the State 20 Program – doctors who practiced primarily in their respective home offices – because Peer PC provided services in several different facilities. However, defendants should have made the effort, and they failed to do so.

3. For example, Ms. Hanna wrote to Dr. Peer on January 28, 2002, informing Dr. Peer that despite the fact that Ms. Hanna already had given Dr. Peer an extension of time in which to file additional site applications, Ms. Hanna had received no response. Ms. Hanna then gave the Peers an additional extension, to February 18, 2002. Pl Exh. 21.

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<sup>7</sup> With reference to the submission (or lack thereof) of site applications, Mr. Peer testified inconsistently that Ms. Hanna told him that defendants could apply only for sites that they owned or rented (which would exclude the hospitals at which Peer PC provided services), but that Ms. Hanna then stated to him that hospital rounds would count toward Dr. Tambay's forty-hour requirement.

4. In addition, after receiving correspondence from Dr. Peer dated February 18, 2002 and determining that it did not include satisfactory information, Ms. Hanna responded to Dr. Peer by letter dated February 20, 2002. Dr. Peer never responded thereafter. Hanna Test.; Pl. Exh. 22; Pl. Exh. 23.

5. On March 12, 2002, Ms. Hanna notified Dr. Tambay, his attorney, the Peers, and their attorney that the DOH wished to meet with them to discuss Dr. Tambay's work situation and the forty-hour requirement. Pl. Exh. 23.

6. On March 19, 2002, a telephone conference took place, in which Dr. Tambay, his attorney, the Peers, their attorney, and Ms. Hanna participated. Dr. Tambay and Ms. Hanna credibly testified that at the conclusion of that conference, there was a consensus among the participants that defendants had not submitted sufficient information so that Dr. Tambay could satisfy his forty-hour requirement, that no new site applications had been filed, and that Dr. Tambay was at that time out of compliance. In addition, Dr. Peer agreed that she could not provide Dr. Tambay with the requisite forty hours per week of work at officially approved MUA sites. Dr. Tambay Test.; Hanna Test.

7. At this point, Ms. Hanna decided not to give defendants another opportunity to submit additional site applications. Hanna Test.

8. Accordingly, the DOH notified Dr. Tambay that he was not permitted to see patients at locations other than the Facilities unless he could first satisfy the forty-hour per week requirement at the Facilities. Agreed Findings at ¶ H.3.

9. Nonetheless, Ms. Hanna told Dr. Tambay that he should continue to work for Peer PC until he could find other employment to satisfy his forty-hour per week requirement. Dr. Tambay Test.

10. After the March 19, 2002 conference, however, the staff at Peer PC told Dr. Tambay that he could not work there, and Dr. Peer told him that Ms. Hanna said that he should not work there until the attorneys sorted things out. Dr. Tambay left, and the Peers never contacted him about returning to Peer PC. Tambay Test.

11. On April 4, 2002, Ms. Hanna corresponded with the Chief of the J-1 Waiver Review Division at the United States Department of State regarding the outcome of the March 19 telephone conference and the fact that Dr. Tambay was unable to work the forty hours per week at officially approved MUA sites required to maintain his status as an H-1B visa holder. Agreed Findings at ¶ H.6; Pl. Exh. 26.

12. On April 8, 2002, Dr. Peer sent a letter to Ms. Hanna in which she conceded that Peer PC could not provide Dr. Tambay with the requisite forty hours per week, and could only provide twenty hours. Pl. Exh. 27.

13. Meanwhile, in February of 2002, when questions arose as to whether Dr. Tambay was fulfilling his forty-hour per week requirement, Dr. Tambay contacted MetroHealth in Cleveland, OH about a job but got no response. Dr. Tambay Test.

14. In the first week in April, MetroHealth contacted Dr. Tambay and told him that a staff position was open. Dr. Tambay went for an interview at MetroHealth, and he was hired on April 12, 2002. Dr. Tambay Test.

15. However, Dr. Tambay did not start work at MetroHealth until June 3, 2002, because the person who held the position prior to him did not leave until then. Dr. Tambay commenced working for MetroHealth at an annual salary of \$100,000. Dr. Tambay Test.

H. Damages

1. The parties have agreed as to the calculation of the amount of damages to which Dr. Tambay is entitled on each claim on which he prevails. *See* Pl. Exh. 30, as amended per Dr. Tambay's counsel's letter of September 15, 2004.

2. Peer PC failed to pay Dr. Tambay for the period in November of 2001 between when he was terminated, without cause and without being given fifteen days written notice or a chance to cure, and when he was reinstated. Dr. Tambay did not quit his job with defendants. As a result, Dr. Tambay was damaged in the amount of \$5,119.23. The parties have agreed as to the calculation of this amount. Dr. Tambay Test.; Pl. Exh. 30.

3. Peer PC failed to pay Dr. Tambay for the period in March of 2002 immediately before he was terminated for the second time. As a result, Dr. Tambay was damaged in the amount of \$5,631.15. The parties have agreed as to the calculation of this amount. Dr. Tambay Test.; Pl. Exh. 30.

4. Peer PC increased Dr. Tambay's salary by ten percent only one time, not every year he worked for Peer PC as required by the Employment Agreement. Dr. Tambay Test. Exhibit B to the Employment Agreement, ¶ 2 is slightly ambiguous as to Dr. Tambay's entitlement to the annual raises. However, Dr. Peer's July 17, 1998 letter to Ms. Hanna unequivocally states that Dr. Tambay's "salary package will be \$125,000, *with a raise of 10% per year in his base salary every year.*" Pl. Exh. 3 (italics added). I find that this letter clarifies that the ten percent raise should have been paid for each year of the Employment Agreement.<sup>8</sup>

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<sup>8</sup> Dr. Peer testified that while she had issues with Dr. Tambay, if he would have discussed them with her, she would have given him the raises. She testified that he refused to sit down and discuss these issues with her. I find this testimony to be not credible, because it is unlikely that Dr. Tambay would have refused to do something that would have resulted in his receiving an annual raise.

During his employment with Peer PC, this amounted to a salary shortfall of \$17,690. The parties have agreed as to the calculation of this amount. Agreed Findings at ¶ I.3; Pl. Exh. 30.

5. In the time between the March 19, 2002 conference where it was determined that Peer PC could no longer provide Dr. Tambay with the requisite forty hours per week and Dr. Tambay's start date at MetroHealth, Dr. Tambay lost \$29,683.11 in salary. The parties have agreed as to the calculation of this amount. Pl. Exh. 30.

6. Considering Dr. Tambay's base salary of \$100,000 at Metrohealth and two subsequent pay increases there, Dr. Tambay was paid \$134,035.79 less than he would have earned had the Employment Agreement been honored. The parties have agreed as to the calculation of this amount. Agreed Findings at ¶ K.1; Pl. Exh. 30.

7. Although it is clear to the court that defendants breached the Employment Agreement, I find that it was a good faith dispute and, therefore, Dr. Tambay is not entitled to the WPCL's twenty-five percent penalty on his damages. *See infra* Conclusions of Law at ¶ B.6-7.

8. Dr. Tambay is entitled to reasonable attorney's fees under the WPCL, *see infra* Conclusions of Law at ¶ C.2, but only for work done to collect damages covered by the WPCL – those sustained prior to March 20, 2002. *See infra* Conclusions of Law at ¶ C.3 & n.9.

9. Dr. Tambay is entitled to prejudgment interest in the amount of \$20,440.13. The parties have agreed as to the calculation of this amount. Pl. Exh. 30.

10. Because Dr. Tambay did not quit his job with defendants without notice (he was terminated by them without cause), defendants are not entitled to damages on their counterclaim. Dr. Tambay Test.

## II. CONCLUSIONS OF LAW

### A. Breach of Contract

1. Dr. Tambay and Peer PC entered into a binding employment agreement on November 5, 1998. Pl. Proposed Conclusions of Law/Def. Resp. at ¶ A.1.

2. Peer PC breached the Employment Agreement when it terminated Dr. Tambay in November of 2001 and again in March of 2002, failed to pay him for time actually worked, and failed to increase his base salary by a minimum of ten percent per year.

3. Dr. Tambay sustained the following damages as a result of the breach: (1) lost wages from the time he was terminated in November of 2001 until he was reinstated; (2) wages he was not paid for work he performed in March of 2002; (3) lost wages resulting from defendants' failure to raise his salary by ten percent annually, as required by the Employment Agreement; (4) lost wages from the time he was terminated in March of 2002 until he found new employment with MetroHealth; and (5) the difference between the salary he would have earned with Peer PC had he not been fired and the salary he earned with Metrohealth, until the end of the term of the Employment Agreement.

4. Dr. Tambay was damaged as a result of these breaches in the amount of \$192,159.28, as explained in Findings of Fact at ¶ H.1-6 above.

### B. Pennsylvania Wage Payment and Collection Law – Liquidated Damages

1. The WPCL requires every employer to pay wages “due to his employees on regular paydays designated in advance by the employer,” and states that “[a]ll wages, other than fringe benefits and wage supplements, earned in any pay period shall be due and payable within the number of days after the expiration of said pay period as provided in a written contract

of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period.” 43 Pa. Cons. Stat. § 260.3(a).

2. The WPCL states also that “[w]henver an employer separates an employee from the payroll, or whenever an employee quits or resigns his employment, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would otherwise be due and payable.” 43 Pa. Cons. Stat. § 260.5(a).

3. Peer PC has violated 43 Pa. Cons. Stat. §§ 260.3(a) & 260.5(a) – the WPCL – by failing to pay Dr. Tambay his wages due.

4. The WPCL defines “employer” as including “every person, firm partnership, association, corporation, receiver or other officer of a court of this Commonwealth and any agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.” 43 Pa. Cons. Stat. § 260.2a.

5. Officers of a corporation may be held individually liable for a corporation’s failure to pay wages. *See Faden v. deVitry*, 625 A.2d 1236, 1239 (Pa. Super. 1993).

6. The WPCL states that “[w]here wages remain unpaid for thirty days beyond the regularly scheduled payday, or, in the case where no regularly scheduled payday is applicable, for sixty days beyond the filing by the employee of a proper claim or for sixty days beyond the date of the agreement, award or other act making wages payable, or where the gross wages payable on any two regularly scheduled paydays in the same calendar quarter, and no good faith contest or dispute of any wage claim including the good faith assertion of a right of setoff or

counter-claim exists accounting for such non-payment, the employee shall be entitled to claim, in addition, as liquidated damages an amount equal to twenty-five percent (25%) of the total amount of wages due, or five hundred dollars (\$500), whichever is greater.” 43 Pa. Cons. Stat. § 260.10.

7. However, the WPCL “entitles plaintiffs to liquidated damages only when there is ‘no good faith contest or dispute of any wage claim.’” *Scully v. US WATS, Inc.*, 238 F.3d 497, 518 (3d Cir. 2001) (quoting 43 Pa. Cons. Stat. § 260.10).

8. Because I found that there was a “good faith contest or dispute” in the present case, I decline to award liquidated damages to Dr. Tambay under the WPCL. *See supra* Findings of Fact at ¶ H.7.

C. Pennsylvania Wage Payment and Collection Law – Attorney’s Fees and Costs

1. The WPCL states that “[t]he court in any action brought under this sections shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs for reasonable attorney’s fees of any nature to be paid by the defendant.” 43 Pa. Cons. Stat. § 260.9a(f).

2. “The finding of a good faith dispute between an employee and employer does not preclude an award of reasonable attorney’s fees and costs under the WPCL for an employee who has already prevailed on [a] claim for past due wages.” *Barnhart v. Compugraphic Corp.*, 936 F.2d 131, 136 (3d Cir. 1991).

3. However, as the parties have agreed, pursuant to the principles of *Barsky v. Beasley Mezzanine Holdings, LLC*, No. 04-1303, 2004 U.S. Dist. LEXIS 17166 (E.D. Pa. Aug.

30, 2004), the damages Dr. Tambay has sustained as a result of defendants' breach of contract subsequent to March 20, 2002 are not covered by the WPCL.<sup>9</sup>

4. Thus, pursuant to 43 Pa. Cons. Stat. § 260.9a(f) and applicable case law, Dr. Tambay is entitled to reasonable attorney's fees and costs, but only for work done to collect damages sustained prior to March 20, 2002. Dr. Tambay will submit within fifteen days of the date of the accompanying order an accounting of attorney's fees to which he feels he is entitled on the relevant claims. Defendants may file a response within fifteen days from the date of plaintiff's submission.

D. Prejudgment Interest

1. Dr. Tambay is entitled to prejudgment interest in the amount of \$20,440.13.

E. Defendants' Breach of Contract Counterclaim

1. Dr. Tambay did not breach the Employment Agreement.

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<sup>9</sup> In *Barsky*, Judge Kelly held that "[l]ost future earnings, due to an alleged improper termination, are more appropriately categorized as expectation damages. These lost earnings arise when the employee is prevented from performing the required services by reason of the alleged improper termination and are not covered by the statutory remedy" of the WPCL. *Barsky*, 2004 U.S. Dist. LEXIS 17166, at \*5 (citation omitted). This is true because "[t]he WPCL does not create a right to compensation, rather it provides additional protection to employees should their employer breach a contractual obligation to pay wages." *Id.* "As a result, [a plaintiff] may only pursue a WPCL claim on wages and other payments due at the time [the plaintiff] was separated from [the] payroll." *Id.* at \*6.



Finally, judgment is entered in favor of counterclaim defendant Nishin Tambay, M.D., and against counterclaim plaintiffs Meeta D. Peer, M.D. and Meeta D. Peer, M.D., P.C., on the counterclaim.

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William H. Yohn, Jr., Judge