

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BROKERAGE CONCEPTS, INC.	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
U.S. HEALTHCARE, INC., et al.	:	
Defendants,	:	NO. 95-1698
	:	
Newcomer, J.		April , 1999

M E M O R A N D U M

Presently before the Court are the following Motions and the responses thereto:

(1) Alternative Motion of Defendants U.S. Healthcare, Inc. and United States Healthcare Systems of Pennsylvania, Inc., d/b/a The Health Maintenance Organization of Pennsylvania for a New Trial or Remittitur; and

(2) Richard Wolfson's Alternative Motion for a New Trial or Remittitur.

For the reasons that follow, defendants' Alternative Motions for a New Trial or Remittitur will be denied.

A. Background

Upon remand from the Third Circuit, this case was tried to a jury for the second time on plaintiff's sole remaining claim of tortious interference with contractual relations. After nearly three weeks of testimony, the jury returned a verdict for defendants Corporate Health Administrators ("CHA"), Scott Murphy, and William Brownstein, and against defendants U.S. Healthcare, Inc. ("USHC"), United States Healthcare Systems of Pennsylvania, Inc., d/b/a The Health Maintenance Organization of Pennsylvania

("HMO PA"), and Richard Wolfson. The jury awarded plaintiff \$105,000.00 in compensatory damages and \$1.75 million in punitives. The jury apportioned punitive damages as follows: \$1.25 million against USHC, \$500,000.00 against Wolfson, and \$0 against HMO PA. Defendants USHC, HMO PA, and Richard Wolfson now move for a new trial or remittitur pursuant to Fed. R. Civ. P. 59(a).

B. Legal Standard

A motion for a new trial may be granted "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." Fed. R. Civ. P. 59(a)(1). Such motions are committed to the discretion of the district court. Rotando v. Keene Corp., 956 F.2d 436, 438 (3d Cir. 1992). A district court's power to grant a new trial, however, is limited to those circumstances where a miscarriage of justice would result if the verdict were permitted to stand. Olefins Trading, Inc. v. Han Yang Chem. Corp., 9 F.3d 282, 289 (3d Cir. 1993). A new trial may be granted based on, inter alia, a question of law, erroneous evidentiary rulings, prejudicial statements by counsel, or because the jury's verdict is against the weight of the evidence. See Klein v. Hollings, 992 F.2d 1285, 1289-90 (3d Cir. 1993).

C. Discussion

1. Recusal of Trial Judge

Defendants raise numerous arguments in support of their Motions for New Trial. First, defendants once again raise their

argument that this Court should have recused itself under 28 U.S.C. § 455(a). Under § 455(a), a judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard is an objective one such that the trial judge should recuse himself if a "reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality." United States v. Antar, 53 F.3d 568, 574 (3d Cir. 1995).

In the instant case, defendants continue to claim that the existence of "coverage issues" with Aetna-U.S. Healthcare, related to the illness and death of Peggy Newcomer Pollack, the trial judge's daughter, required recusal in this case. Apparently, defendants read § 455(a) to mean that whatever bald-faced allegations a lawyer chooses to manufacture must be assumed to be true, and that in light of such allegations, the trial judge must consider whether a reasonable third party would harbor doubts about the judge's impartiality. While such a reading of § 455(a) is undoubtedly convenient to an attorney willing to allege anything needed, the Court cannot agree with such an outlandish interpretation of the statute.

In this case, defendants offered no proof or documentation of their allegations, and relied solely on the affidavit of defense counsel John Elliott, an affidavit which contained only hearsay statements and not even an allegation that this judge was aware of any "coverage issues." Given such insufficient and unsubstantiated allegations, the Court cannot

agree that a reasonable person, considering all circumstances, would harbor doubts about the Court's impartiality in this case. Indeed, in order to permit the Court to apply the standard, it was incumbent upon the movants, the defendants, to discover and allege "all circumstances" that were relevant. Instead, defendants relied only on hearsay statements which this judge knew to be false. Defendants did not submit the affidavit of the purported declarant, nor did defendants bother to allege that this judge knew of any coverage issues. Given these circumstances, a reasonable person could not harbor doubts about a judge's partiality, where the judge is not even alleged to have known of the amorphous coverage issues. Despite defendants' vehement insistence that Mr. Elliott's unsubstantiated and fatally insufficient affidavit is alone adequate grounds for recusal, this Court disagrees and finds that a new trial is not warranted based on these grounds.

2. Evidentiary Rulings

Second, defendants argue that a new trial is warranted because the Court made numerous erroneous evidentiary rulings which denied defendants a fair trial. First, defendants argue that they were wrongfully precluded from offering evidence of "relatedness." This argument has already been addressed by the Court in its Memorandum and Order disposing of defendants' Motions for Judgment as a Matter of Law. The Court sees no need to repeat its reasoning here. This argument is therefore rejected.

Next, defendants argue that the Court erred by permitting plaintiff to assert and introduce evidence of harm to Gary's beyond May 31, 1996, the date on which Drug Emporium acquired Gary's. Plaintiff introduced such evidence under a "superseding cause" or "outside force" theory under § 435A of the Restatements (Second) of Torts, and the Court instructed the jury only to award damages beyond May 31, 1996 if it found that the defendants' allegedly tortious conduct caused harm to plaintiff by causing plaintiff to lose profits beyond May 31, 1996, and if it also found that defendants' conduct increased the risk of Gary's being sold to Drug Emporium. This issue has also been argued before the Court on a number of different occasions, and the Court is unpersuaded that it was in error in permitting the jury to determine this issue. The Court further finds defendants' arguments that such a theory of liability was never pled and that defendants had no notice of such a theory prior to the close of discovery, to be disingenuous as it was defendants who first raised this issue as a defense prior to the second trial, asking the Court to rule that plaintiff could not, as a matter of law, collect damages arising after Drug Emporium's purchase of Gary's. And finally, as plaintiff accurately notes, even if submission of the issue to the jury was in error, defendants can claim no prejudice as the jury, pursuant to the special interrogatories, specifically rejected plaintiff's theory and awarded no damages for the period after May 31, 1996. Defendants' claim that this evidence somehow tainted the award of

punitive damages is unavailing in view of the jury's specific rejection of this theory of liability. Accordingly, this argument is rejected.

Next, defendants raise again their novel argument that the Court should have permitted defendants' introduction of evidence of alleged undisclosed commissions made by plaintiff, which, according to defendants, showed conduct that violated ERISA and was criminal. This issue was extensively briefed during trial, and the Court, upon considering defendants' arguments and plaintiff's responses at that juncture, found, inter alia, that such evidence was irrelevant because the issue to be determined was whether Gary's was coerced, not whether Gary's would have made a different decision if it had information that admittedly it did not have at the time it decided to switch TPAs. The Court also found that defendants had waived such an argument in any event because they had not hitherto raised such a defense. Upon consideration of the self-same arguments at this time, the Court is unpersuaded that its prior ruling was in error, or that the Court's ruling so prejudiced defendants so that a new trial is warranted. Indeed, permitting defendants to introduce such belated "nondisclosure" evidence would have resulted in a mini-criminal trial within an already complex and lengthy trial, a result that this Court could not have countenanced. Accordingly, this argument too is rejected.

Next, defendants argue that the Court erred by precluding defendants from presenting evidence of witness Gary

Wolf's bias and credibility. Contrary to defendants' arguments, however, defendants were able to and did cross-examine Gary Wolf in full and at length, both concerning any payments received by plaintiff's counsel and concerning his prior testimony.

Furthermore, any remarks by the Court, if they prejudiced defendants, were corrected when the Court instructed the jury that all credibility determinations were for the jury, and that any comments by the Court to that end were to be ignored. And finally, in the Court's judgment, even if the Court erred in any way with respect to Gary Wolf's testimony, such error is not prejudicial enough to warrant a new trial. Ample other evidence apart from Gary Wolf's testimony supports the jury's verdict; therefore any prejudice suffered by defendants is minimal at best. Accordingly, this argument too is rejected.

Next, defendants argue that the Court erred by striking defense exhibit 65, a June 2, 1995 cost comparison of various proposals allegedly prepared by broker David Oberkircher. As plaintiff correctly points out, however, not only did defendants amply elicit testimony from witness Robin Risler concerning her state of mind and why she believed CHA's proposal was superior to plaintiff's, but more to the point, Ms. Risler was unable satisfactorily to authenticate defense exhibit 65 in this Court's judgment. Furthermore, exactly as plaintiff argues, the state of mind hearsay exception cited by defendants is unavailing as it is the declarant's state of mind which is relevant, and Ms. Risler was not testifying to Mr. Oberkircher's state of mind, but rather

her own state of mind. Finally, again the Court notes that even if there was any error, in the Court's judgment it is not prejudicial enough to warrant a new trial. Defendants could have called Mr. Oberkircher as a witness but chose not to, and Ms. Risler had already testified to most of the exhibit's contents. Accordingly, this argument is rejected.

Next, defendant argue that the Court erred by admitting hearsay evidence under the state of mind exception. This argument was raised on numerous occasions throughout the course of the trial, and as the Court noted during those times, the Third Circuit has already passed on this issue and stated that admission of such statements was proper under the state of mind exception. See Brokerage Concepts, 140 F.3d at 533 n.31. In any event, the Court is unpersuaded that its evidentiary rulings on this matter were in error, as the admitted evidence properly showed the declarant's state of mind pursuant to the hearsay exception. Therefore this argument is rejected.

Next, defendants raise once again their argument that the Court erred by permitting the jury to consider Mr. Wolfson's jointly held assets in assessing punitive damages. Defendants are unable to point the Court to a single case supporting their proposition, and simply as a matter of common sense, where the wealth of an individual is at issue as in the case of punitive damages, jointly held assets, of which the individual has an undivided interest, are of course indicative of his wealth. To

argue otherwise is simply irrational, and thus this argument is again rejected by the Court.

Next, defendants argue that the Court erred by permitting plaintiff to offer evidence of increased costs to Gary's after Gary's switched to CHA as its TPA while disallowing defendants from questioning Gary Wolf and Robin Risler regarding their feelings about CHA's services after the switch. Part of this argument has already been addressed by the Court above, and as noted previously, even if admission of such evidence was in error, defendants are hard-pressed to argue that they suffered any prejudice as the jury clearly and unequivocally rejected plaintiff's claim that any increased costs to Gary's caused Gary's to go out of business. With respect to the latter part of defendants' argument, the Court sees no error in precluding such evidence of witnesses' feelings about CHA's services after the fact, as such evidence had no relevance to the case, that is, to the question why Gary's switched TPAs. Accordingly, this argument too is rejected.

Next, defendants argue that the Court erred by admitting evidence of other pharmacies, in particular pursuant to plaintiff's exhibit 347A, a redacted version of a stipulation previously entered into by all counsel at the first trial. This Court admitted that exhibit as an admission. Exhibit 347A included data on the number of pharmacies participating in the network both in the geographic areas in which Gary's stores were located as well as neighboring areas, and data on the use of

freezes for alleged misuse of generic drug utilization. As the Court stated at trial, this evidence was relevant to, inter alia, plaintiff's claim that the infrequency of instituting a freeze revealed abuse of the system with respect to Gary's.

Furthermore, defendants have pointed to no prejudice suffered because of admission of this exhibit. As the Court further finds that admission of exhibit 347A was not so prejudicial as to warrant a new trial, this argument too is rejected.

Finally, defendants argue that the Court erred by permitting the expert testimony of Carlton Harker and Stephen Paul. The Court flatly rejects these arguments, as the testimony of Mr. Harker was properly based on documentation possessed by Gary's decisionmakers, and contrary to defendants' arguments, was not speculative of what Gary's decisionmakers were thinking. Likewise, defendants' attacks on Dr. Paul's credentials are meritless. Dr. Paul has a doctorate in pharmaceutical economics and has been a professor in this field for over thirty years. (TR 1/13/99 at 229-30.) The Court properly allowed Dr. Paul to testify as an expert in this area. Accordingly, defendants' arguments for a new trial based on allegedly erroneous evidentiary rulings are rejected.

3. Jury Instructions and Interrogatories

Third, defendants claim that a new trial is mandated because of errors in the Court's charge to the jury, the Court's failure to include certain instructions, and improper and erroneous interrogatories submitted to the jury. In the first

instance, defendants argue that the Court erred by failing to distinguish in its charge between prospective and existing contractual relations, and by referring to plaintiff's contractual relations with Gary's as "existing and/or prospective." Upon careful consideration, this Court determined that because Gary's indisputably did have an existing contract with plaintiff, and because at the same time this contract was terminable-at-will and therefore could be characterized as prospective, it was proper to charge the jury on both. More to the point, however, as the Third Circuit alluded to, the classification of the contractual relation is not significant because the competitor's privilege as set forth in § 768(1) of the Restatement (Second) of Torts is applicable to both existing and prospective contractual relations. Furthermore, the Court did specifically instruct the jury that plaintiff had to prove, as an essential element of its claim, the existence of a contractual relation or a reasonable likelihood that plaintiff would have had a contract with a third party but for the defendants' alleged interference. Accordingly, defendants cannot claim any prejudice from the inclusion of both existing and prospective contractual relations in the Court's charge. Accordingly, this argument is rejected.

Next, defendants argue that this Court's charge to the jury on "outside force" was erroneous as a matter of law. The Court has already addressed this argument a number of times, and once again rejects it as defendants suffered no prejudice even if

such an instruction was in error, given that the jury specifically found that plaintiff had not proved damages pursuant to its "outside force" theory.

Next, defendants argue that the Court's instructions to the jury on the elements of "absence of privilege or justification" and "purpose or intent to harm" were erroneous as a matter of law. Defendants claim that the Court should have charged the jury that to find "wrongful means," defendants' conduct must have been independently wrongful. While the Court's patience is immensely tested by defendants' blatant and tireless insistence in arguing a point directly contrary to the Third Circuit's explicit holding, the Court merely rejects, once again, this meritless argument.

Next, defendants claim that the Court's instructions on causation and punitive damages were inadequate or erroneous. Not only, as plaintiff argues, have such arguments been waived as they were not raised on appeal, see Laffey v. Northwest Airlines, Inc., 740 F.2d 1071, 1089 (D.C. Cir. 1984) ("Adherence to the rule that a party waives a 'contention that could have been but was not raised on [a] prior appeal' is, of course, necessary to the orderly conduct of litigation.") (quoting Munoz v. County of Imperial, 667 F.2d 811, 817 (9th Cir.), cert. denied, 459 U.S. 825 (1982)), but the Court finds that the instructions to the jury on both causation and punitive damages were adequate and not erroneous. Accordingly, this argument is rejected.

Next, defendants claim that the Court erroneously instructed the jury that punitive damages need not bear a reasonable relationship to compensatory damages. The Court, however, agrees with plaintiff that BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), does not suggest that a proportionality charge must be submitted to the jury, but rather that a federal court must review punitive damage amounts with due process considerations in mind. No authority cited by defendants requires this Court to charge the jury on due process considerations governing proportionality. Accordingly, this argument is rejected.

Next, defendants argue that the Court's charge on damages was inadequate because the charge failed to instruct the jury that speculative damages could not be awarded and that damages could not be recovered for illegal activities. This baseless argument is rejected, as the Court specifically did charge the jury, in two separate instances, that damages must not be speculative; and as no evidence of illegal activities was in the record.

Finally, defendants claim that the jury interrogatories were erroneous as a matter of law because the jury was not asked whether plaintiff had proven the existence of a prospective contractual relation, and because no specific causation interrogatory was given. The Court has already addressed the prospective-versus-existing-contractual-relations argument, and having determined that there was no need to distinguish between

the two in this case, it follows that the jury did not need to be questioned specifically about the existence of a prospective contractual relation. With respect to defendants' argument that a specific causation interrogatory should have been posed, defendants cite no case law requiring a causation interrogatory in particular, and given that the Court adequately charged the jury that causation was a necessary element to finding liability against defendants, an interrogatory to the same effect was not necessary. Accordingly, this argument is rejected.

4. Misconduct of the Trial Judge

Defendants' fourth argument is that "prejudicial, unnecessary, demeaning and accusatory comments" directed by the Court at defendants and their counsel prejudiced defendants and warrants a new trial. (Defs' Mot. for New Trial or Remittitur at 126.) The Court's review of such alleged instances as set forth in defendants' memorandum, however, fails to persuade the Court that, inter alia, its questioning of a recalcitrant witness such as Mr. Wolfson, or the Court's comments to counsel to move the case along, in particular when faced with antagonistic and argumentative behavior of defense counsel, are prejudicial enough to warrant a new trial. In the opinion of the Court, not only were the Court's comments and questions proper, but the Court's instructions to the jury--both before and at the close of trial--also clearly emphasized the Court's proper role as well as the jury's proper role. That, in the course of a nearly three-week trial where counsel for both sides picked each and every possible

issue to the bone, and where defense counsel in particular tried the Court's patience with numerous arguments made in questionable faith, that the Court maintained its self-composure throughout these proceedings, is rather remarkable, in this Court's humble opinion. This argument for a new trial is therefore rejected as well.

5. False Evidence

Fifth, defendants once again argue that they are entitled to a new trial because the jury's verdict was based on Gary Wolf's "perjurious" testimony. This is not a valid grounds for a new trial, and as defendants had ample opportunity to cross-examine Mr. Wolf and discredit his credibility before the jury, and as sufficient other evidence apart from Mr. Wolf's testimony supports the jury's verdict, this argument too is rejected.

6. Remittitur of Punitive Damages

In the alternative, defendants claim that in the event that a new trial is not granted, the Court must grant remittitur of the jury's punitive damage award of \$1.75 million. Defendants present several arguments in support of this motion.

First, defendants argue that the punitive damage award is unconstitutional under BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). According to the Supreme Court in Gore, "[p]unitive damages may properly be imposed to further a State's legitimate interest in punishing unlawful conduct and deterring its repetition." Id. at 568 (1996). Noting that most states

that permit punitive damage awards require that "the damages awarded be reasonably necessary to vindicate the State's legitimate interest in punishment and deterrence," the Court emphasized that "[o]nly when an award can fairly be categorized as 'grossly excessive' in relation to these interests does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment." Id.

Under Gore, there are three "guideposts" for determining whether an award of punitive damages is "grossly excessive": (1) the degree of reprehensibility of defendant's conduct; (2) the disparity between the harm or potential harm suffered by plaintiff and the punitive damages award; and (3) the difference between this remedy and the civil penalties authorized or imposed in comparable cases. Id. at 574-75. As the third factor is inapplicable to the case at hand, the Court focuses upon the first two factors only.

Defendants first argue that punitive damages are not justified because their conduct was not reprehensible. According to the Supreme Court, the degree of reprehensibility of the defendant's conduct is "[p]erhaps the most important indicium of the reasonableness of a punitive damages award." Id. at 575. "This principle reflects the accepted view that some wrongs are more blameworthy than other." Id. In the instant case, this Court is satisfied that defendants' conduct was sufficiently reprehensible to warrant the punitive damage award returned by the jury. Although the injury suffered by plaintiff in this case

was economic in nature as in Gore, unlike in Gore, the economic injury in this case was inflicted intentionally through defendants' affirmative misconduct. See id. at 576 (noting that the harm inflicted by defendant was purely economic in nature, but that infliction of economic injury, particularly when done intentionally through affirmative acts of misconduct, can warrant a substantial penalty).

Evidence in this case showed that defendants, upset at having lost Gary's account to plaintiff, intentionally and affirmatively decided to "play hardball" in order to get Gary's account back by misusing their quality assurance procedures and by refusing to process Gary's application to admit its Abington store into USHC's pharmacy network. To point to one example of many, Patty Maleski, a former USHC employee, testified that upon being informed by Gary's that Gary's would be terminating their fully-insured coverage with USHC, she broke the news to her boss David Rocchino, the vice president of marketing for USHC. (TR 1/5/99 at 161-164.) Mr. Rocchino became "very upset" and told Ms. Maleski that "if they want to play hardball, we can play hardball." (Id. at 164.) Mr. Rocchino then called Mr. Wolfson, the senior vice-president of the pharmacy program at USHC, and in a conference call with Ms. Maleski and Mr. Wolfson, discussed how if Gary's "wanted to terminate and, if they want to play hardball, we can play hardball." (Id. at 165.) According to Ms. Maleski, such "hardball" plans included "accidentally" forgetting

Gary's from USHC's next pharmacy directory, or slowing up the process of reviewing a new Gary's pharmacy location. (Id.)

While defendants still cling to the mantra of "hard bargaining" and free competition, claiming, inter alia, that their merely competitive conduct does not reach the degree of reprehensibility to permit the punitive damage award returned by the jury in this case, this Court finds that such testimony as above, in addition to much other evidence of the same character, amply demonstrates affirmative misconduct by defendants that is sufficiently reprehensible to justify the jury's award of punitive damages. While competitive behavior and hard bargaining are undoubtedly legitimate in and of themselves, Pennsylvania has made the policy decision that tortious interference with another's contractual relations takes away the protective shield of a competitor's privilege, and that in the proper circumstances punitive damages are justified to punish the defendant and deter him from committing like acts. Furthermore, pursuant to the Third Circuit's ruling in this case, the type of "competition" engaged in by defendants, as shown by the evidence, "is specifically deemed wrongful" under comment e to § 768 of the Restatement (Second) of Torts. In view of the above, the Court is well satisfied that the state's legitimate interests in punishing and deterring such tortious conduct, and defendants' affirmative acts of misconduct, justify the jury's award.

Defendants next argue that the punitive damage award cannot stand because it does not bear a reasonable relationship

to the jury's determination of actual harm suffered by plaintiff as demonstrated in the jury's award of compensatory damages in the amount of \$105,000.00. In addressing the ratio factor, the Supreme Court has noted that "we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award." Gore, 517 U.S. at 582. The Court also noted that low compensatory awards could support a higher ratio where, for instance, "a particularly egregious act has resulted in only a small amount of economic damages." Id. "In most cases, the ratio will be within a constitutionally acceptable range, and remittitur will not be justified on this basis." Id. at 583.

This Court is satisfied that despite the ratio of \$105,000.00 compensatories to \$1.75 million in punitives, there exists a reasonable relationship between the two so that the punitive damage award does not infringe the constitutional bounds of due process. Although the jury found that plaintiff had not met its burden of proving that defendants' conduct caused Gary's to sell to Drug Emporium, defendants nevertheless should not benefit from this happenstance by now arguing that the small amount of compensatories for which it was held liable should mandate the remittitur of the jury's punitive damage award. The potential harm to plaintiff was far greater than the compensatory award returned by the jury in that plaintiff could have expected to keep Gary's account for at least as long as its average for

keeping other accounts. That Drug Emporium acquired Gary's and that this event cut off defendants' liability for beyond the acquisition date, pursuant to the jury's finding, does not mean that defendants' tortious conduct did not harm plaintiff beyond the date of the acquisition. From defendants' viewpoint, by interfering in plaintiff's contract with Gary's, the potential harm that defendants could have caused to plaintiff was certainly beyond the amount of compensatory damages returned by the jury. Furthermore, the Court also finds that defendants' misconduct justifies the jury's punitive damage award despite the low compensatory damage award, and that defendants should not benefit from the fortuitous sale of Gary's to Drug Emporium by being permitted to argue that the punitive damage award should be remitted to be more "proportional" to the compensatory damage award. Accordingly, this argument for remittitur is rejected.

Next, defendants argue that the punitive damage award must be set aside because it is excessive as a matter of Pennsylvania law. This Court disagrees. Nothing about the jury's punitive damage award shock's this Court's sense of justice. Indeed, in view of the defendants' wealth, the award is perfectly acceptable as a means of punishment. And again, defendants' picking and choosing of evidence favorable to themselves is unavailing in light of the ample evidence from which the jury could have determined that defendants' acts were outrageous or recklessly indifferent to plaintiff's rights, as well as the rights of others. Accordingly, this argument too is

rejected, and the Court determines that the jury's award will not be remitted.

7. Weight of Evidence

Finally, defendants reassert by reference their arguments contained in their Motions for Judgment as a Matter of Law, claiming, in short, that the evidence is insufficient to support the jury's verdict. The Court having considered and ruled on these arguments in its Memorandum and Order denying defendants' Motions for Judgment as a Matter of Law, such arguments are rejected here as well.

D. Conclusion

In conclusion, the defendants' Motions for New Trial or Remittitur will be denied.

An appropriate Order follows.

Clarence C. Newcomer, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BROKERAGE CONCEPTS, INC.	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
U.S. HEALTHCARE, INC., et al.	:	
Defendants,	:	NO. 95-1698

O R D E R

AND NOW, this day of April, 1999, upon consideration of the following Motions, and responses thereto, and consistent with the foregoing Memorandum, it is hereby ORDERED as follows:

(1) Alternative Motion of Defendants U.S. Healthcare, Inc. and United States Healthcare Systems of Pennsylvania, Inc., d/b/a The Health Maintenance Organization of Pennsylvania for a New Trial or Remittitur is hereby DENIED.

(2) Richard Wolfson's Alternative Motion for a New Trial or Remittitur is hereby DENIED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.