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

JOHN JOSEPH EDWARDS, Plaintiff,	:	CIVIL ACTION
v.	:	
AARON WESLEY WYATT, Defendant.	:	No. 01-1333

MEMORANDUM AND ORDER

J. M. KELLY, J. **JULY , 2004**

After a non-jury retrial in the above captioned matter, and review of the pleadings filed by the parties, the Court makes the following Findings of Fact, Conclusions of Law and decision.

I. FINDINGS OF FACT

Jurisdiction

1. Plaintiff John Joseph Edwards ("Edwards") is a citizen of the State of South Carolina.

2. Defendant A. Wesley Wyatt ("Wyatt") is a citizen of the Commonwealth of Pennsylvania.

3. The amount in controversy between Edwards and Wyatt in this case is alleged to exceed $75,000.

Background

4. In 1993, Edwards was the President of Pilot Air Freight Corporation ("Pilot"), a privately owned air freight forwarding

business which was headquartered in Lima, Pennsylvania.

5. In 1993, Edwards owned one-third of the stock - 33 and 1/3 shares out of 100 total issued shares - in Pilot. The remaining two-thirds of the company was owned by Edwards' cousins, Tom and Bill Edwards ("the Edwards cousins"), in equal amounts.

6. In 1993, Edwards was introduced to Wyatt by Richard G. Phillips ("Phillips"), a local Philadelphia attorney who was counsel for Pilot, Edwards and Wyatt at the time. Phillips thought that Wyatt might be able to help Pilot by investing in the company.

7. In January of 1994, Wyatt became an investor in Pilot and secured an option to purchase 45 shares in the company from the Edwards cousins. Wyatt was also given the right to appoint individuals to fill two seats on Pilot's five person Board of Directors.

8. In January of 1994, through the same transaction in which Wyatt became an investor in Pilot, Phillips was made the Chairman of Pilot and acquired 10 shares in the company from the Edwards cousins. Phillips also became the Voting Trustee over the remaining 11 and 2/3 shares of the company owned by the Edwards cousins. Phillips was also given a seat on Pilot's Board of

Directors.

9. In January of 1994, through the same transaction in which Wyatt and Phillips became involved in Pilot, Edwards was given a three-year Employment Agreement with Pilot, which provided that he would be paid $200,000 in salary per year and be eligible to receive annual bonuses up to the same amount from the company. Edwards fully retained, however, his one-third ownership interest in Pilot. Edwards was also given the right to appoint individuals to fill the remaining two seats on Pilot's Board of Directors.

10. In May of 1994, Edwards decided to adopt an exit strategy from Pilot because of Phillips' approach to running it, and hired attorney Don Auten to help him with that strategy.

11. At a dinner meeting in March or April, 1995, Wyatt and Edwards agreed to take some corporate governance action to "eradicate Mr. Phillips from the Company."

12. Wyatt and Edwards decided to join forces to exercise the combined power of the seats they controlled on Pilot's Board of Directors to vote to remove Phillips as Chairman of the company. Wyatt and Edwards also decided to terminate Pilot's retainer agreement paying $7,000 per week to Phillips' law firm.

13. Shortly thereafter, Edwards' attorney gave him

Plaintiff's Exhibit 9, an April 13, 1995 press release from Pilot announcing that Edwards was out and Phillips was back in at Pilot, because Wyatt had realigned himself with Phillips.

14. Wyatt never called Edwards to discuss the franchisees' concerns that led to his decision to change sides and realign with Phillips.

15. Plaintiff's Exhibit 12 is a transcript of the April 20, 1995 Pilot Board Meeting where Wyatt aligned himself with Phillips to vote Edwards out of Pilot and put Phillips back in charge of the company. At that meeting, Wyatt and Phillips gave employment agreements to each other. Wyatt's agreement was for eight years at $200,000 a year, plus bonuses and other benefits.

16. Sometime shortly after the April 20th board meeting, Wyatt had a discussion with Phillips about Edwards. Phillips told Wyatt that he was going to cut off Edwards' money and litigate him into the ground, which stunned Wyatt.

17. On August 20, 1996, Edwards commenced a bankruptcy proceeding under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania. In re: John Joseph Edwards, Bankruptcy No. 96-17868 (DWS).

18. The assets of Edwards' bankruptcy estate consisted of

his one-third interest in Pilot, a one-third interest in a real estate partnership which owned land upon which Pilot's businesses were situated, and certain claims Edwards had against third parties including Wyatt, Pilot and Phillips ("Edwards' Assets").

19. In February, 1997, Edwards' voluntarily converted his Chapter 11 bankruptcy reorganization to a Chapter 7 dissolution.

20. A Chapter 7 Trustee, Christine Schubert, was appointed and proceeded to employ a valuation expert to value Edwards' Assets.

21. The Trustee's valuation expert, Steven Scherf, CPA, fixed a value of $2,745,000 for Edwards' Assets: $2,600,000 for the interest in the Pilot stock and $145,000 for the interest in the Edwards partnership.

22. In the fall of 1997, Wyatt owned forty-five percent of the issued and outstanding stock of Pilot, Edwards' Chapter 7 Trustee controlled his thirty-three and one-third percent of Pilot's stock, and the balance of Pilot's stock was owned or controlled by Phillips, who also served as Pilot's President and Chief Executive Officer.

23. Around the time of the bankruptcy proceeding, Wyatt was sued in the United States District Court in Camden, New Jersey in an action seeking to invalidate his purchase of his option to

purchase forty-five shares of Pilot stock.

Wyatt and Edwards discuss a potential alignment

24. In December 1997, one of Wyatt's lawyers, Jay Ochroch, Esquire ("Ochroch"), and Edwards' lawyer, Stephen L. Braga, Esquire ("Braga"), met to discuss a potential alignment between Edwards and Wyatt and the possibility of trying to effect a sale of Pilot.

25. During December, 1997, Braga also met with Phillips to discuss a possible alignment between Edwards and Phillips. Edwards and his counsel later decided to pursue their negotiations with Wyatt.

26. During the months of December 1997 and January and February 1998, Wyatt and Edwards' representatives met to outline and finalize the contents of a written settlement agreement specifying what Wyatt and Edwards would try to accomplish by their collaborative efforts.

February 1998 Settlement Agreement

27. Plaintiff's Exhibit 30 is a written settlement agreement that was executed by Edwards and Wyatt on February 18, 1998 in furtherance of their mutual ambition to sell either the assets or

the stock of Pilot (“the Settlement Agreement”).

28. The Settlement Agreement contains an integration clause that specifically and expressly provides that the Settlement Agreement “and the documents delivered pursuant hereto constitute the entire agreement and understanding between the Parties hereto as to the matters set forth herein and supersede and revoke all prior agreements and understandings, oral and written, between the parties hereto or otherwise with respect to the subject matter hereof.”

29. The Settlement Agreement integration clause commits the parties to change the Settlement Agreement only in writing: “[n]o change, amendment, termination or attempted waiver of any of the provisions hereof shall be binding upon any party unless set forth in an instrument in writing signed by the parties.”

30. Edwards was represented by Braga during the negotiations of the Settlement Agreement. Braga was aware of the existence and effect of the integration clause.

31. It is undisputed that Edwards’ pre-petition claims for money from Pilot are property of Edwards’ bankruptcy estate for the benefit of Edwards’ creditors, and do not belong to Edwards.

Obligations under the Settlement Agreement

32. The Settlement Agreement contemplated, inter alia, a consulting agreement between Edwards and one of Wyatt's companies (the "Consulting Agreement").

33. Pursuant to the Consulting Agreement, Wyatt agreed and caused Edwards to be paid a fee of $6,731 per week for 26 weeks. Wyatt also paid $150,000 to Braga's law firm towards Edwards' legal bills and also provided Edwards with the use of a 1998 Acura automobile.

34. Pursuant to Paragraph 5 of the Settlement Agreement Wyatt loaned Edwards $500,000, which was later repaid.

35. The operative provision of the Settlement Agreement regarding the sale of Pilot's assets or stock is Paragraph 6. This provision of the Settlement Agreement is titled, Sale of Stock. It required both parties, inter alia, to "use their best efforts to cause Pilot, its shareholders and directors to sell either all or substantially all of the assets of Pilot, the stock of Pilot or cause an initial public offering of the Pilot stock at a price mutually acceptable to the Parties."

36. In furtherance of this sale, Wyatt and Edwards also agreed to assure that each had equal power to appoint two board members and they agreed to petition the Bankruptcy Court to join them in appointing a financial advisor for the purpose of seeking

a sale or IPO of Pilot, or, alternatively, to convert Edwards' Chapter 7 to a Chapter 11 case so that Edwards could, as a debtor in possession, pursue a sale of Pilot's assets or stock.

37. On February 18, 1998, Wyatt had no other commitments to Edwards outside the written Settlement Agreement.

38. The parties agree that Wyatt fulfilled each and every obligation contained in the Settlement Agreement.

Initial Public Offering of Pilot

39. Wyatt arranged for various professionals to attend a meeting with Edwards' Chapter 7 Trustee and assist him and Edwards in their effort to persuade Edwards' Chapter 7 Trustee to permit an Initial Public Offering ("IPO") of Pilot.

40. Edwards attended the meeting with the Trustee where a presentation was made to try to convince her to support a joint motion to make an IPO of Pilot. There were a number of professionals at the meeting. None of the IPO professionals were retained by Wyatt. They were there primarily to demonstrate to the Trustee the valuation that they had put on Pilot.

41. At the Trustee meeting, the brokerage firm of A.G. Edwards showed its valuation for Pilot ranging 14 to 24 times earnings, and Penn Merchant Group Limited made a similar statement. At the meeting, Edwards recalled that Wyatt spoke of

similar numbers that the others had estimated the valuation to be worth roughly $60 to $120 million.

42. Braga believed that the IPO was “speculative” because Phillips would be an impediment to an IPO, Wyatt’s control over his shares were in question due to the litigation in Camden between Wyatt and the Edwards Cousins, and furthermore, that Edwards’ Trustee, rather than Edwards himself, had control over his shares of Pilot.

43. The Trustee rejected the IPO proposal.

44. Wyatt and Edwards filed a joint motion to have the bankruptcy court approve the IPO proposal. The bankruptcy judge denied the joint motion in a short order.

45. On March 12, 1998, the Trustee filed her Motion of the Chapter 7 Trustee to Sell Assets (the “Sale Motion”).

46. Pursuant to the Sale Motion, the Trustee sought the sale of Edwards’ Pilot stock to Phillips for $3.4 million and mutual releases by the estate and Pilot for various claims pending between the estate and Pilot.

47. Wyatt and Edwards discussed the “option” of Wyatt buying the Pilot stock from Edwards’ bankruptcy estate and then returning the stock to Edwards for the money, however, Wyatt was later advised by counsel that this act would be illegal.

The April 30, 1998 “Handshake Agreement”

48. On April 30, 1998, when it became apparent that Wyatt and Phillips were now involved in a bidding contest for Edwards’ stock to avoid being in a minority position, Wyatt and Edwards agreed that neither would enter into any agreement with Phillips to settle the bankruptcy sale proceeding without the participation of the other party (the “Handshake Agreement”).

49. Phillips “always has been” Wyatt’s arch enemy.

50. The participation requirement of the Handshake Agreement only required the parties include the other in an agreement with Phillips to settle the bankruptcy sale proceeding. The Handshake Agreement did not require the parties to include the other in any negotiations with Phillips regarding settlement of the bankruptcy sale proceeding.

51. There was no requirement under the Handshake Agreement that Wyatt and Edwards would receive the same amount of consideration if there was a settlement with Phillips.

52. Under the Handshake Agreement, if either Wyatt or Edwards took an unreasonable position, the other party would no longer be bound by the Handshake Agreement.

53. The Handshake Agreement was never reduced to writing.

54. The Handshake Agreement was totally different from the

February 18th written settlement agreement. We find that, just as Braga testified at the first trial, "By the time of the handshake agreement, it was clear the two options in the written agreement, the IPO motion and the Chapter 7 to 11 conversion motion, were not going to work, so the written agreement . . . was fulfilled by that point in time. The handshake agreement was an additional agreement made in light of the changed circumstances that those two things didn't work."

55. The mutual consideration underlying the Handshake Agreement was that, Wyatt did not want Edwards to reach an independent agreement with Phillips any more than Edwards wanted Wyatt to reach an independent agreement with Phillips. By standing together, they were each stronger.

56. There was no relationship between the Handshake Agreement and Wyatt's ability to bid for the stock, the estate assets in the bankruptcy.

57. On or about May 7, 1998, Wyatt tendered a bid of $3.6 million for Edwards' Assets.

58. On May 11 and June 17, 1998, the Trustee put on her evidence in support of a sale based on the Phillips bid.

59. Edwards objected to this sale as being undervalued and moved the Bankruptcy Court to deny the Trustee's motion and to

allow him to return to a Chapter 11 to reorganize his stock interests in some form of private offering. The Bankruptcy Court overruled this request, adjourned the hearing at the request of Wyatt and subsequently, on July 16, 1998, entered an order establishing certain procedures for concluding the sale.

60. Pursuant to the Bankruptcy Court's July 16, 1998 Order, Wyatt, on July 20, 1998, submitted a bid of $5 million in cash supplemented by a bond of up to $3 million to secure payment of the Pilot claims against the estate when liquidated.

Expiration of the Consulting Agreement

61. Although Edwards wanted to renew the Consulting Agreement, Wyatt decided not to renew the Consulting Agreement, which was set to expire on August 7, 1998.

July 29, 1998 Continuance Hearing

62. Braga knew that Phillips and Wyatt, the only two bidders at the July 29, 1998 continuance hearing for the bankruptcy sale of Edwards' Assets, were "arch rivals."

63. On July 29, 1998, Phillips, in collaboration with Pilot's franchisees, many of whom supported his bid in filed pleadings, proffered the sum of $5.1 million along with an offer

to settle Pilot's claims against Edwards' bankruptcy estate by a mutual release.

64. At the request of counsel for the Pilot franchisees, and without objection, the hearing to confirm the bankruptcy sale was adjourned until October 30, 1998, at which time the Bankruptcy Court ordered a final auction to take place.

65. Wyatt was "flabbergasted" upon hearing of the continuance to adjourn the hearing until October 30, 1998.

66. Braga admitted that at the time of the continuance Edwards would not have been prejudiced so long as the bids in place at the time were made irrevocable, which they were.

67. Wyatt had authorized Ochroch to bid up to $10 million for the Pilot stock.

68. On the day of the July 29, 1998 continuance, Wyatt had lunch with his attorney Phillip Fisher and discussed an overbidding scenario whereby Wyatt would overbid for Edwards' stock in whatever amount was necessary to outbid Phillips and then return the stock to Edwards in exchange for a refund of some of the money Wyatt used for the bid. Phillip Fisher advised Wyatt not to discuss the overbidding scenario with Edwards due to its illegal nature. Wyatt remembers that meeting because "[t]hat's the first time I [Wyatt] was shook by a lawyer,

physically."

69. On or before July 29, 1998, partially due to the suggestion of the overbidding scenario, Silverstein advised Braga that he did not want Wyatt and Edwards talking alone, instead, he wanted counsel to handle any discussions between Wyatt and Edwards.

70. On July 29, 1998, after both the continuance of the bankruptcy sale and lunch with Phillip Fisher that day, Wyatt met with Edwards at the Tuscany Coffee Shop and expressed his belief that the continuance was a result of lawyers "posturing" and that despite his annoyance about the continuance his intentions were to proceed with his bid for Edwards' shares of Pilot stock held by the Bankruptcy Court. Wyatt also informed Edwards that he would not proceed with any overbidding strategy for Edwards' stock, but, instead, offered to go to Washington D.C. in order to see if there was something else they could do.

71. The parties later scheduled a meeting in Washington, D.C. for September 1, 1998.

Braga's July 30, 1998 Letter

72. Plaintiff's exhibit 95 is a July 30, 1998 letter that Braga wrote and addressed to Ochroch and Silverstein at the law firm of Fox Rothschild O'Brien & Frankel.

73. On July 30, 1998, Braga wrote to Ochroch and Silverstein expressing his concern about the relationship between Wyatt and Edwards because, "as a result of the July 29th hearing . . . Mr. Silverstein had instructed Mr. Wyatt not to talk to Mr. Edwards anymore and it's hard for two people to have an alignment going forward if you're not talking to each other."

74. Braga indicated in his July 30, 1998 letter that Edwards was upset that, within the past twenty-four hours, Wyatt had declined to renew the Consulting Agreement.

75. Braga also wrote in his July 30, 1998 letter to Ochroch and Silverstein that "[t]he reality of the events over the past twenty-four hours only heightens John's belief (and, mine as well) that something fundamental has changed. In fact, those events confirm that there really is no ongoing relationship between John and Wes at this point in time. . . . I would suggest that you make negotiating an endgame result with John your first and immediate priority. Otherwise the game may be over as far as he is concerned; if it is not already."

76. The "game" meant Wyatt's relationship with Edwards. The "game" would necessarily be over if either party planned on negotiating his own deal with Phillips without including the other.

77. Wyatt understood the July 30, 1998 letter to mean that

the cooperating agreement between himself and Edwards was over.

78. The Settlement Agreement was fulfilled and the decision not to renew the Consulting Agreement was made prior to Braga's July 30, 1998 letter.

79. Phillips was a mutual enemy to both Wyatt and Edwards.

80. On July 30, 1998, prior to receipt of Braga's letter on this date, the Handshake Agreement was the only explicit cooperating agreement between Wyatt and Edwards that was potentially useful to settlement of the bankruptcy sale proceeding.

81. Ochroch believed that "the letter of the 30th meant that Mr. Edwards had determined that there was no more relationship between Mr. Wyatt and Mr. Edwards." Ochroch further believed that because Braga was always "straightforward" in his communications, he took Braga's statement in the July 30th letter that "John has gone over the edge" very seriously.

Braga's July 31, 1998 letter

82. Plaintiff's exhibit 96 is a July 31, 1998 letter in which Braga again wrote to Ochroch and Silverstein and informed them that: " . . . [Edwards] has asked me to endeavor to negotiate his own independent settlement in this matter. I have been authorized to give you (and, thus Wes [Wyatt]), a one-week

period within which to conclude a settlement agreement with John [Edwards]. If such an agreement has not been concluded within that time, then I have been directed to provide the same opportunity to Mr. Phillips, which I will initiate on Friday, August 7th, if necessary."

83. Braga wrote the July 31, 1998 letter "very stridently, very much from the heart" and with no drafts. Braga expected Ochroch and Silverstein to "take [the letter] seriously."

84. Just as Ochroch testified, the July 31, 1998 letter meant that, "Mr. Edwards had determined that there was no more relationship between Mr. Wyatt and Mr. Edwards," that a "gauntlet" was thrown down reaffirming that there was no more relationship, and that "all bets were off."

85. The July 31, 1998 letter meant that, absent a new settlement agreement with Wyatt, Edwards was going to both negotiate and conclude a deal with Phillips to the exclusion of Wyatt.

86. Wyatt understood the July 31, 1998 letter to mean that the "Handshake Agreement" was terminated and that Edwards was "going to go independent of us."

87. Silverstein understood the July 31, 1998 letter to mean that the Handshake Agreement was "terminated."

88. Braga did not write a letter confirming that he was

withdrawing his July 30 and 31, 1998 letters, nor did Braga confirm that the Handshake Agreement was still in effect.

Ochroch's telephone call to Braga

89. In response to Braga's July 31, 1998 letter, Ochroch contacted Braga on August 6, 1998 in order to set up a meeting to discuss the July 31, 1998 letter.

90. Ochroch, as a result of the letters, "wanted to look Mr. Braga in the eye and sit down at a meeting and make sure everyone understood there was no more relationship because Mr. Wyatt was not going to continue or renew the consulting contract. So we had a meeting."

The August 10, 1998 meeting

91. Braga met with Ochroch, Phillip Fisher, and Lane Fisher (another one of Wyatt's lawyers) and Wyatt on August 10, 1998 to discuss the July 31, 1998 letter. Silverstein was not at the meeting.

92. After the August 10, 1998 meeting, for pragmatic reasons, Wyatt and counsel allowed Edwards to finish a preexisting term of both the automobile's lease and the medical insurance's policy. Just as Ochroch, Wyatt, Phillip Fisher and Lane Fisher's testified, a compromise was not struck between the

parties.

93. Wyatt and Edwards did not enter into a new agreement with regard to the Handshake Agreement or the July 30 or 31, 1998 letters as a result of the August 10 meeting.

94. Just as Wyatt testified, the relationship was not repaired at the August 10 meeting and was not repaired at any point after August 10.

95. Just as Ochroch testified, no deal was made, everything was not patched up, and at the end of the meeting everybody went their separate ways. When the August 10 meeting concluded, Braga's demands, contained within his July 30 and 31, 1998 letters, were not met, and, as Ochroch testified, "whatever was going on between the parties, whatever relationship or alignment there was, was over, and Edwards was going to do what Braga threatened in his July 31, 1998 letter, negotiate a deal with Phillips."

96. Braga and Edwards sought to have Edwards' Consulting Agreement continued and also sought additional funds for payment of legal fees, but, as Phillip Fisher testified, "they didn't get anything that they asked for." The Consulting Agreement was not extended and Wyatt advanced no additional funds. With regard to the relationship between Edwards and Wyatt, Phillip Fisher "didn't even view there was one after the meeting," and believed

that “the parties were going their own ways.”

97. Lane Fisher believed that after the August 10 meeting, “the consulting agreement was not renewed and expired pursuant to its terms.”

98. After the July 30 and 31, 1998 letters, Braga alleges that the relationship between Edwards and Wyatt was “patched up” at the August 10, 1998 meeting, but did not write a letter to confirm the allegedly re-established relationship, withdraw his July 30 and 31, 1998 letters, or confirm that the Handshake Agreement was still in effect.

99. Between July 30 and October 30, 1998, Wyatt and Phillips met on numerous occasions to fashion a compromise. Edwards did not participate in any of these meetings, but was aware that Wyatt and Phillips were negotiating.

100. Braga was communicating with Ochroch in August of 1998 because Wyatt and Edwards were working to achieve a result, “[t]hat result being that Mr. Phillips not wind up with Mr. Edwards’ shares.”

101. No documentation exists confirming that Braga wrote to either Wyatt or Wyatt’s counsel in regards to a number that Edwards would find acceptable in any settlement of the estate.

The September 1 Meeting in Washington, D.C.

102. On September 1, 1998, Wyatt, accompanied by his attorney Phillip Fisher, met with Edwards and Braga in Washington, D.C.

103. At the meeting, a general discussion ensued concerning Edwards Bankruptcy proceeding.

104. At the September 1 meeting, Wyatt stated that if a global settlement with the franchisees was possible, then the settlement would have to include Edwards because the franchisees "wanted assurance that Edwards would in no way participate in the management of the company." However, no global settlement was ever reached with the franchisees.

105. No new agreements were reached between Wyatt and Edwards and no old promises or agreements were revived as a result of the September 1, 1998 meeting in Washington, D.C.

Braga's September 2, 1998 letter

106. Following the September 1, 1998 meeting in Washington, D.C., Braga wrote to Wyatt, in which he stated, "[b]eyond the foregoing, I do not see any clear coordinated strategy that we might be able to engage in toward your and John's mutual benefit until <u>you</u> fist decide . . . ."

107. The September 2, 1998 letter makes no mention of any

new or existing contracts, agreements or alignments being entered into at the September 1 meeting in Washington, nor does it mention that any contract or agreement of alignment exists between the parties.

The October 30, 1998 Settlement Agreement

108. On October 30, 1998, Wyatt and Phillips jointly offered a cash bid of $5.2 million, plus the claims settlement (the "Joint Bid") pursuant to a Settlement Agreement entered into between Wyatt, Phillips, Pilot, one other individual and the Estate of Edwards (the "Wyatt/Phillips Settlement"). Additionally, Pilot agreed to reimburse the Trustee for any federal tax liability she may incur as owner of the shares as a result of undistributed profits of Pilot, which is a S corporation.

109. The Wyatt/Phillips Settlement was initiated on October 29, 1998, and was not concluded until the "eleventh hour" and well "after midnight" that night, which was sometime in the early morning hours of the October 30, 1998 hearing before Bankruptcy Judge Sigmund.

110. Edwards' pre-petition claims for salary and bonuses due from Pilot were property of Edwards' bankruptcy estate which were released by the Trustee in connection with the Joint Bid.

Wyatt's October 30, 1998 settlement offer

111. Silverstein told Braga that, if a global settlement was possible, then it would be his preference to have the global settlement include Edwards as the inclusion of Edwards would avoid litigation.

112. It is undisputed that, at the October 30, 1998 hearing, Silverstein, on Wyatt's behalf, offered Braga $200,000 in addition to the $5.2 million to be paid to Edwards' estate.

113. Edwards was not informed of the $200,000 settlement offer.

114. On November 2, 1998, Edwards made a $15 million settlement proposal to Wyatt ($9.8 million in addition to the $5.2 million to be paid pursuant to the bid).

115. According to Braga, the offer represented a "bottom line number that [was] not negotiable." Wyatt rejected Edwards' offer and did not propose another offer because the $15 million offer was "not negotiable."

Edwards appeals Bankruptcy Judge Sigmund's Order and then dismisses his appeal with prejudice

116. Edwards objected to the Joint Bid submitted by Wyatt and Phillips.

117. On December 15, 1998, Bankruptcy Judge Sigmund issued

an order granting the Trustee's Sale Motion to sell Edwards' Assets pursuant to the Joint Bid submitted by Wyatt and Phillips.

118. On December 28, 1998, Edwards filed a notice of appeal of Judge Sigmund's December 15, 1998 order.

119. On August 8, 1999 Edwards withdrew his appeal with prejudice.

II. CONCLUSIONS OF LAW

1. The Handshake Agreement represented an enforceable promise. Wyatt and Edwards, with Phillips as their common enemy, each mutually agreed not to enter into any agreement with Phillips without the participation of the other party. See Channel Home Centers v. Grossman, 795 F.2d 291, 298-299 (3d Cir. 1986)(stating test for enforceable agreement under Pennsylvania law).

2. The facts at trial and retrial established that Wyatt's agreement with Phillips, without the participation of Edwards, would have been a breach of the Handshake Agreement. Similarly, Edwards' agreement with Phillips, without the participation of Wyatt, would have been a breach of the Handshake Agreement. Fulfillment of the Handshake Agreement would be a settlement agreement that included Wyatt, Edwards, and Phillips. An additional settlement agreement between only Wyatt and Edwards

was beyond the scope of the Handshake Agreement. A global settlement with Pilot's franchisees was beyond the scope of the Handshake Agreement.

3. Under Pennsylvania law, a notice of termination of a contract that is clear and unambiguous is effective to end a contractual relationship. See Maloney v. Madrid Motor Corp., 385 Pa. 224, 228 (1956)(stating the general test for contract termination in Pennsylvania). Here, the letters of July 30 and 31, 1998, from Braga to Ochroch and Silverstein at the law firm of Fox Rothschild O'Brien & Frankel, unequivocally stated Edwards' intention to terminate or repudiate the Handshake Agreement effective immediately.

4. Moreover, Braga's July 31, 1998 letter on behalf of Edwards, standing alone, clearly and objectively manifested Edwards' refusal to perform under the terms of the Handshake Agreement and constituted an anticipatory repudiation that terminated this agreement. A repudiation occurs before the time to perform has arrived. United Corp. v. Reed, Wible and Brown, Inc., 626 F.Supp. 1255, 1257 (D.C.V.I. 1986). Under Pennsylvania law, an anticipatory breach of contract requires "an absolute and unequivocal refusal to perform or a distinct and positive statement of an inability to do so." Pennsylvania Avenue Corporation v. Federation of Jewish Agencies, 489 A.2d 733, 737

(Pa. 1985)(citing McClelland v. New Amsterdam Casualty Co., 185 A. 198, 200 (Pa. 1936)). "A statement by a party that he will not or cannot perform in accordance with agreement creates such a breach." Oak Ridge Construction Co. v. Tolley, 351 Pa. Super. 32, 38 (1985)(citing 4 Corbin on Contracts § 959, at 852-56 (1951)); Jonnet Development Corp. v. Dietrich Industries, Inc., 316 Pa. Super. 533, 543 (1983)(same).

In Braga's July 31, 1998 letter, Braga wrote that Wyatt had "a one-week period within which to conclude a settlement agreement with John [Edwards]," otherwise Edwards would then violate the Handshake Agreement by concluding an independent settlement agreement with Phillips. Not only did Braga's July 31, 1998 letter on behalf of Edwards affix the additional requirement of a new settlement agreement between Edwards and Wyatt to the Handshake Agreement, but it also required that this agreement be formed within a one week time frame. By affixing these additional requirements as conditions to Edwards' performance under the Handshake Agreement, Edwards expressed an "absolute and unequivocal" refusal to perform in accordance with the original terms of the Handshake Agreement, and that refusal repudiated the Handshake Agreement. See Oak Ridge Construction Co. 351 Pa Super. 39 (analyzing whether defendant's letter was "a statement of intention not to perform except on conditions which

go beyond the contract" and, therefore, "a definite and unconditional repudiation" of the contract); accord REA Express v. Interway Corp., 538 F.2d 953 (2d Cir. 1976)(finding that "insistence on terms which are not contained in a contract constitutes an anticipatory repudiation thereof"); PAMI-LEMB I Inc. v. EMB-NHC, L.L.C., 2004 Del. Ch. LEXIS 81 (Del. Ch. June 21, 2004)(holding "statement of intent not to perform unless terms different from the original contract are met constitutes a repudiation"); Chamberlin v. Puckett Construction, 921 P.2d 1237 (Mont. 1996)(same).

5. Collectively, Braga's July 30 and 31, 1998 letters were an absolute and unequivocal termination of not only the Handshake Agreement, but also the entire cooperating relationship between Edwards and Wyatt, which at that point in time was an alliance between Edwards and Wyatt against Phillips.

6. Braga's July 30, 1998 letter on behalf of Edwards gave clear and unambiguous notice of intent to terminate or repudiate the Handshake Agreement and the cooperating relationship by stating that "something fundamental has changed," that "John [Edwards] has gone over the edge," and that as a result of this change it is confirmed that, "there really is no ongoing relationship" between Edwards and Wyatt.

7. Braga's July 31, 1998 letter reaffirms Edwards' intent to

terminate or repudiate the Handshake Agreement and the cooperating relationship by informing Wyatt that "it is clear that there is no turning back from what John [Edwards] views as the breach of his relationship with Wes [Wesley]," and that negotiating new settlement agreement between Edwards and Wyatt is the only means by which Wyatt could prevent an independent settlement agreement between Edwards and Wyatt's "arch enemy," Phillips, which, prior to the July 30, 1998 termination or the July 31, 1998 repudiation, would have been a breach of the Handshake Agreement.

8. The intent to terminate or repudiate expressed in Braga's July 30 and 31, 1998 letters, was also objectively apparent as both of Wyatt's attorneys, acting in their professional capacity, understood the July 31, 1998 letter as terminating any and all relationships between Edwards and Wyatt existing at that time.

9. Edwards' demand for a new settlement agreement within one-week's time, in order to prevent his independent settlement with Phillips, at most, constituted a new offer to ally with Edwards for some undefined amount of consideration. This offer was materially different than the Handshake Agreement, was never accepted by Wyatt, and the parties did not form a new settlement agreement as a result of this demand.

10. This dispute has been marked by a "game" involving

shifting alliances and agreements between Edwards, Wyatt, and Phillips. Edwards' July 30 and 31, 1998 letters terminated or repudiated the Handshake Agreement and the cooperating relationship, and, at most, constituted an offer to negotiate a realignment with Edwards against Phillips, but did not invoke the Handshake Agreement in offering to realign.

11. There is no evidence from which a nullification or a retraction of the repudiation or termination notice could be inferred. Braga admitted that he wrote a substantial amount of letters, which meticulously documented seemingly each and every event. Braga testified that he did not write a letter confirming that the relationship was "fixed," even after the relationship between Edwards and Wyatt appeared over. Braga did not write a letter confirming that he was withdrawing his July 30 and 31, 1998 letters, nor did Braga confirm that the Handshake Agreement was still in effect. The absence of any letter reaffirming the relationship between Edwards and Wyatt indicates that the termination or repudiation was final. See Bruce Lincoln-Mercury, Inc. v. Universal C.I.T. Credit Corporation, 325 F.2d 2, 22 n. 44 (3d Cir. 1963) (stating that the fact finder may use "a 'measure of speculation' in arriving at its decision").

12. After receipt of the July 31, 1998 letter from Braga, Ochroch telephoned Braga to set up a meeting for August 10, 1998

to formally conclude the cooperating relationship between Edwards and Wyatt. The August 10 meeting absolutely and unequivocally confirmed that the Handshake Agreement was terminated or repudiated. At this meeting, the Handshake Agreement was not reformed, and a new settlement agreement between Edwards and Wyatt was not reached. At the conclusion of the August 10 meeting, the testimony of Wyatt, Ochroch, Phillip Fisher and Lane Fisher supports our finding that all relationships or alignments between Edwards and Wyatt were over and that Edwards was going independent of Wyatt.

13. The Handshake Agreement was not renewed or reformed, and a new agreement between Edwards and Wyatt was not reached after the July 31, 1998 letter. After Edwards' letters that terminated or repudiated the Handshake Agreement, Edwards and Wyatt continued to communicate in hopes of effectuating their shared interest in preventing Phillips from buying Edwards' shares of stock, which was also the underlying goal of both the Settlement Agreement and the Handshake Agreement. Despite the actions taken post-termination by Edwards and Wyatt toward this common goal that resembled actions taken in furtherance of their pre-termination alliances, "post-termination behavior identical with pre-termination behavior is an insufficient basis to support an automatic renewal of a contract." See EFCO Importers v.

Halsobrunn, 500 F. Supp. 152, 156 (E.D. Pa. 1980)(construing Maloney v. Madrid Motor Corp., 385 Pa. 224 (1956)).

14. Wyatt did not waive his defense of repudiation. Wyatt was not required to raise repudiation as an affirmative defense in pre-trial pleadings. See Fiberlink Communications Corp. v. Digital Island, Inc., No. 01-2666, 2002 U.S. Dist. LEXIS 13202, at *1 n.6 (E.D. Pa. July 18, 2002)(citing 13 Richard A. Lord, Williston on Contracts § 39:37 (4th ed. 2000) that, "when an action is brought by the repudiating party, anticipatory repudiation is not an affirmative defense that is required to be specifically pleaded in response").

15. While not dispositive of this matter, there is a serious question as to whether Edwards has proven he suffered damages as a result of Wyatt's alleged breach. A plaintiff is entitled to damages if: (1) they were such as would naturally and ordinarily result from the breach; (2) they were reasonably foreseeable and within the contemplation of the parties at the time they made the contract; and (3) they can be proved with reasonable certainty. Ferrer v. Trustees of the University of Pennsylvania, 825 A.2d 591, 610 (Pa. 2003). The plaintiff bears the burden of proof as to damages. Judge Technical Services v. Clancy, 813 A.2d 879, 885 (Pa. Super. 2002)(citing Penn Elec. Supply Co., Inc. v. Billows Elec. Supply Co., Inc., 364 Pa. Super. 544 (1987)).

While not requiring the plaintiff to prove damages to a mathematical certainty, Pennsylvania law requires the plaintiff to introduce sufficient facts so the finder of fact may determine damages with reasonable certainty. ATACS Corporation v. Trans World Communications, Inc., 155 F.3d 659, 669 (3d Cir. 1998). The courts have defined reasonable certainty as "a rough calculation that is not 'too speculative, vague or contingent' upon some unknown factor." ATACS, 155 F.3d 669-70 (citing Sprang & Co. v. United States Steel Corp., 545 A.2d 861, 866 (Pa. 1988).

Edwards' damages calculations, which at various times have been placed between $11 million and $120 million, are "speculative, vague and contingent on unknown factors." First Edwards' damages calculations are speculative in that there is a $110 million swing between his low estimate and his high estimate. Thus, Edwards has failed to prove his damages with "reasonable certainty." In addition, Edwards failed to offer expert testimony at trial to support this figure. Edwards relies on figures put forth by consultants whom were not employed by Wyatt, but rather attended the IPO meeting in hopes of receiving gainful employment in connection with the proposed IPO. On this evidence, the Court would be speculating by formulating a damages award in this matter. Braga described the IPO scenario as "speculative," and because the IPO never occurred, these values

cannot be offered to sustain a damages award.

Reliance on Wyatt's opinion as to the value of Pilot's stock at one point in time, for the purposes of calculating Edwards' damages, is misplaced. At trial, Wyatt testified that he has no formal training in evaluating companies, nor has he ever taken a company public. Thus, Wyatt's opinion as to the value of Pilot's stock in 1998 is pure speculation.

In addition, any information contained in Pilot's K-1 reports is inadmissible as hearsay. Edwards failed to produce any witness at trial who could corroborate the figures or be available for cross-examination regarding the values listed on the K-1 reports. Thus, the K-1s may not be relied upon in calculating Edwards' damages.

Furthermore, Edwards contends that he is entitled to a "pro rata" share of the benefits that Wyatt received as a result of the settlement with Phillips. There is no evidence that the parties agreed to this "formula." Additionally, the notion that Edwards is entitled to a "pro rata" share of the benefits based upon his percentage of ownership of Pilot fails to account for Edwards' status as a Chapter 7 debtor. As a Chapter 7 debtor, the shares became property of Edwards' Bankruptcy estate and were subject to sale by the Bankruptcy Trustee. Pursuant to the Bankruptcy Code, Edwards did not maintain ownership of the shares

nor could he control their disposition. See In re Cult Awareness Network, Inc., 151 F.3d 605, 609 (7th Cir. 1998).

Edwards' damages testimony is primarily the opinion testimony of Edwards and Braga. A plaintiff's opinion as to the existence and value of damages may not be enough to sustain a damages award. Ware v. Rodale Press Inc., 322 F.3d 218, 220-21 (3d Cir. 2003). In Ware, the plaintiff brought a breach of contract action stemming from the termination of a publishing contract. The Third Circuit upheld the district court's dismissal of the claim. In its opinion, the Third Circuit found persuasive the following findings of the district court concerning damages:

> Plaintiff failed to provide any supporting documentation or expert reports or analysis to support its damages calculations. Plaintiff produced no evidence or documentation concerning costs and expenses Plaintiff avoided by not having to perform its sales duties under the contract. Nor had Plaintiff provided the basis for itemized advertised commissions. In fact, the damages calculations, as presented, evince little more than the opinion of Reginald Ware.

Id. at 226.

Edwards' last day of employment at Pilot was April 20, 1995. Edwards' opinion as to the value of Pilot in 1998 is irrelevant, since he was not involved in the day-to-day operations of Pilot and was not made aware of internal financial operations of Pilot.

In his testimony, Braga indicated that $15 million would be a suitable number to achieve a complete settlement between the parties. Braga indicated that he "was trying to come up with creative ways" to arrive at that number, which "seems like a fair number." Again, a damages award cannot be sustained on such conjecture and opinion.

16. Edwards has failed to prove he relied to his detriment on any promises of Wyatt. The elements of promissory estoppel under Pennsylvania law are: "(1) the promisor makes a promise that he reasonably expects to induce action or forbearance by the promisee; (2) the promise does induce action or forbearance by the promisee; and (3) injustice can only be avoided by enforcing the promise." Edwards v. Wyatt, 335 F.3d 261, 277 (3d Cir. 2003); Carlson v. Agnot-Ogden Memorial Hosp., 918 F.2d 411, 416 (3d Cir. 1990). As the Tuscany Coffee Shop meeting occurred before Edwards' termination or repudiation of his cooperating relationship with Wyatt and the Handshake Agreement, any promises made at that meeting were no longer enforceable after Edwards' July 30 and 31, 1998 letters. Regardless of the July 30 and 31, 1998 letters, no promises were made or renewed at the coffee shop meeting. At that meeting, Wyatt did not promise that he would maintain an alliance with Edwards and against Phillips until the end of the bankruptcy sale. Further, as a result of the

September 1, 1998 meeting in D.C., no new agreements were reached between Wyatt and Edwards and no old promises were revived.

17. After the July 30 and 31, 1998 letters, Wyatt and Edwards maintained a mutual desire to preclude their common enemy, Phillips, from buying Edwards' shares. This mutual desire led to future discussions between the parties about how to implement that desire at the bankruptcy sale, but these discussions did not result in an agreement, nor did they revive the Handshake Agreement, or create any enforceable promises from Wyatt that he would work for a set amount of time in concert with Edwards and against Phillips.

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

JOHN JOSEPH EDWARDS, Plaintiff,	:	CIVIL ACTION
v.	:	
AARON WESLEY WYATT, Defendant.	:	No. 01-1333

O R D E R

AND NOW, this day of July, 2004, in consideration of the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that judgment is entered in favor of Defendant, Aaron Wesley Wyatt, and against Plaintiff, John Joseph Edwards. This case is **CLOSED** for statistical purposes.

BY THE COURT:

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JAMES McGIRR KELLY, J.