

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED
MAR 13 2019
U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

WHEELING HOSPITAL, INC.,

Plaintiff,

CIVIL ACTION NO.:

5119-CV-32 (stamp)

v.

LOUIS LONGO,

Defendant.

COMPLAINT

Plaintiff Wheeling Hospital, Inc. (“Wheeling Hospital”), a citizen of the State of West Virginia, by and through its counsel, brings this action against Defendant Louis Longo (“Longo”), a citizen of the Commonwealth of Pennsylvania, to recover damages in excess of \$75,000 for breach of fiduciary duty and abuse of process, and in support of these claims avers as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff Wheeling Hospital is non-profit charitable organization incorporated in the state of West Virginia and with its principal place of business in Wheeling, West Virginia within the Northern District of West Virginia.

2. Wheeling Hospital is a citizen of West Virginia as defined by 28 U.S.C. §1332(c)(1).

3. Wheeling Hospital’s mission includes providing compassionate care to people and promoting the well-being of its employees and its community.

4. Serving the community is central to Wheeling Hospital's existence, and the Hospital strives to ensure that quality and comprehensive medical services are available to the citizens of Wheeling and to other residents of the Upper Ohio Valley.

5. In recognition of community needs, it is particularly important to Wheeling Hospital that it supports individuals and families in their various stages of life, and thus, it has taken steps to build and preserve its women's healthcare services (including obstetrics), pediatrics, cardiology, oncology, family medicine and other essential services.

6. Defendant Longo is an individual residing in, and a citizen of, the Commonwealth of Pennsylvania, and at times pertinent hereto maintained a residential address in Allison Park, Pennsylvania.

7. From on or about November 28, 2011 until on or about August 27, 2015, Longo was employed by Wheeling Hospital as an executive with the title of Executive Vice President.

8. The United States District Court for the Northern District of West Virginia has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1332(a)(1) as this is a civil action between citizens of different states with an amount in controversy in excess of \$75,000.

9. Venue lies in the Northern District of West Virginia pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims set forth herein occurred in the Northern District of West Virginia.

II. FACTS

10. Longo is a certified public accountant with an employment history that reflects Longo having held multiple positions with multiple employers in the field of health care consulting.

11. Longo's various positions have included engagements as a director and/or partner at Alpern Rosenthal & Co., BDO, USA, LLP and Deloitte Touche Tohmatsu Limited, ("Deloitte"), all of which are financial consulting firms.

12. Longo purports to be well familiar with health care finance and compliance and the firms with which he has been employed specialize in serving health care institutions with such matters.

13. Longo currently is employed as the Chief Financial Officer at Warren General Hospital, an 89 bed community hospital located in Northwestern Pennsylvania.

14. In or around March 2006, Deloitte was engaged by Wheeling Hospital to provide healthcare consulting, financial, tax and audit services to the Hospital.

15. As a partner and director at Deloitte, Longo became engaged in and otherwise responsible for audit and compliance matters for Wheeling Hospital and in that capacity had access to Wheeling Hospital's financial accounts, records, material agreements, and management teams.

16. Through this engagement, Longo regularly conducted detailed audit reviews of Wheeling Hospital's business and activities, including analysis of revenues and expenses, material engagements and compliance responsibilities.

17. As part of the engagement, Longo was responsible for identifying risks of fraud and reporting the existence of fraud and/or the risk of fraud to the Board of Directors of Wheeling Hospital.

18. At no time during Longo's engagement with Deloitte did he ever express to Wheeling Hospital that he had concerns regarding fraud at Wheeling Hospital.

19. At no time during Longo's engagement with Deloitte did he ever express to Wheeling Hospital that Deloitte's audit activities had identified fraud or the risk of fraud with respect to Wheeling Hospital's physician contracts.

20. To the contrary, at all times pertinent hereto, Longo and Deloitte issued "clean audit reports" and reported no material deficiencies with respect to accounting and/or compliance matters.

21. In November 2011, Wheeling Hospital hired Longo to serve in an executive capacity overseeing, hospital operations and physician engagements.

22. A true and correct copy of Longo's Employment Agreement with Wheeling Hospital is attached hereto as Exhibit A.

23. As an employee and Executive Officer of Wheeling Hospital, Longo was required to exercise the utmost good faith and loyalty toward the corporation and was prohibited from acting in a manner adverse to Wheeling Hospital's interest.

24. Longo had an affirmative obligation to act in the best interest of the organization and to carry out his job functions in a manner consistent with principles of good faith and with the duties of care and loyalty owed by fiduciaries.

25. On or about November 28, 2011, Longo affirmed that he had received, read, and understood Wheeling Hospital's Compliance Plan, which provided that Longo was required to report any violations of federal law or regulation that he witnessed to Wheeling Hospital's Corporate Compliance Officer.

26. At no time during his employment, or in his role as a partner at Deloitte, did Longo report any suspicions of fraud or violations of federal law or regulation to Wheeling Hospital's Compliance Officer.

27. At no time during his employment did Longo report any concerns or suspicions of fraud or violations of Federal law or regulations to the Audit Committee of Wheeling Hospital's Board of Directors, notwithstanding being present at those meetings.

28. One month after Longo received his last severance payment from Wheeling Hospital, on or about September 26, 2016, Longo called Wheeling Hospital's Chief Executive Officer and threatened that, according to his "legal team," he had some kind of case against Wheeling Hospital that could cost the Hospital a lot of money unless Wheeling Hospital settled with him.

29. On December 22, 2017, Longo filed a frivolous and false complaint against Wheeling Hospital in the United States District Court for the Western District of Pennsylvania under the purported auspices of the Federal False Claims Act (the "FCA Complaint"). On information and belief, this Complaint was filed while Longo was employed as the CFO of Warren General Hospital.

30. The FCA Complaint falsely alleges that during Longo's employment at Wheeling Hospital, Wheeling Hospital "defrauded... Medicare and Medicaid out of tens of millions of dollars of federal funds by paying certain physicians excessive compensation."

31. The allegations in the Complaint are false and were made purposefully by Longo in an effort to receive a quick monetary settlement as a Relator. In fact, in his capacity as a Relator, Longo failed to disclose key evidence to the government including, but not necessarily limited to, the results of a 2015 exempt organization audit conducted by the IRS in which physician compensation for the exact physicians named in his Complaint were reviewed.

32. Fair market value is what a willing buyer will pay to a willing seller at the time, and this by necessity, must take into account the quality of the seller's product and the buyer's need for the product in the context of local conditions.

33. In fact, Wheeling Hospital paid its physicians fair compensation at the market rates necessary to secure the high quality care it was committed to provide to the people of the Upper Ohio Valley.

34. Providing quality services from labor and delivery to palliative end-of-life care ensures that patient needs are met and that quality care in these communities is ensured.

35. To require Wheeling residents to travel 80 miles to Pittsburgh (where Longo filed his lawsuit) or 60 miles to Morgantown for comprehensive care is untenable, unsustainable and unsafe. (Notably, Wheeling Hospital is the only Level II trauma center in the Upper Ohio Valley).

36. Importantly, the physicians identified in Longo's FCA complaint are highly qualified and skilled professionals, many of whom have a record of quality and demonstrated leadership that demand a high level of compensation.

37. They are capable, willing and available to provide care in Wheeling, and their compensation agreements reflect their fair market value.

38. It is for this reason that neither Longo nor Wheeling Hospital's long-time auditor Deloitte ever reported to Wheeling Hospital's Board of Directors, Management, or Corporate Compliance Officer any concern or statement that Wheeling Hospital's physician contracts were unlawful.

39. It is for this reason that during his employment, Longo never raised his alleged concerns at the Audit Committee meetings, which again, he attended regularly.

40. The agreements and arrangements cited by Longo are not commercially unreasonable or fraudulent in any respect.

41. The agreements and arrangements cited by Longo are lawful and consistent with practices that Longo (while at Deloitte and perhaps elsewhere) advanced and supported.

42. The explanation is that Longo's actions and conduct as described herein are motivated by a malicious effort to harm Wheeling Hospital and the community it serves.

43. Longo's threats and the legal action he filed in the United States District Court for the Western District of Pennsylvania are consistent with a concerted effort to contort the legal process to his own personal advantage and wealth.

COUNT I: BREACH OF FIDUCIARY DUTY

44. Plaintiff hereby incorporates paragraphs 1- 43 above as if set forth fully herein.

45. As an Executive Officer, Longo owed Wheeling Hospital a duty to comport himself and to carry out his responsibilities in a manner consistent with his role as a fiduciary.

46. Longo owed Wheeling Hospital a fiduciary duty to refrain from threatening to bring false claims in an effort to extort a settlement.

47. At no time during his employment did Longo report to Wheeling Hospital any circumstances constituting violations of federal law or regulation at Wheeling Hospital. If he had first-hand knowledge of any such violations he was obligated to report them.

48. Longo breached his fiduciary duties to Wheeling Hospital, both generally and in the following particulars:

- a) By seeking to extort funds from Wheeling Hospital by threat of a false and meritless legal action;

- b) By contriving and/or concocting circumstances while in his Executive Office position and/or his position as a partner of Deloitte, to create a claim for damages against the Hospital;
- c) By advancing his personal interests to the detriment of Wheeling Hospital;
- d) Based on information and belief, by making unprivileged false statements regarding Wheeling Hospital and its physicians, its management and leadership teams; and
- e) By defaming Wheeling Hospital and its physicians, its management and leadership teams.

49. The allegations in Longo's FCA Complaint regarding his alleged "first-hand knowledge" of illegal compensation arrangements at Wheeling Hospital are false and malicious.

50. The allegations in Longo's FCA Complaint have been widely published and disseminated.

51. Longo's conduct as described herein was intentional, deceptive, and part of a plan to injure Wheeling Hospital.

52. Wheeling Hospital has suffered significant damages in excess of \$75,000 as direct and proximate result of Longo's intentional misconduct, extortion and breaches of fiduciary duty.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in its favor and against Defendant Longo, in an amount to be determined but in excess of Seventy-Five Thousand (\$75,000.00) plus reasonable attorneys' fees, interest, costs, punitive damages, and such other relief as the Court deems just and proper.

COUNT II: ABUSE OF PROCESS

53. Plaintiff hereby incorporates paragraphs 1- 52 above as if set forth fully within.

54. By filing a meritless and fabricated FCA Complaint, Longo willfully and maliciously misused and misapplied a legal process to accomplish a purpose not intended or warranted by that process.

55. The purpose of Longo's FCA Complaint is for Longo to obtain a pecuniary award and to inflict harm on Wheeling Hospital.

56. Indeed, based upon information and belief, Longo's FCA Complaint has been characterized by Longo and/or his associates as "Lou's Revenge."

57. Longo's abuse of process was intentional and without privilege.

58. Wheeling Hospital has suffered significant damages in excess of \$75,000 as direct and proximate result of Longo's abuse of process.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in its favor and against Defendant Longo, in an amount to be determined but in excess of Seventy-Five Thousand (\$75,000.00) plus reasonable attorneys' fees, interest, costs, punitive damages, and such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands trial by jury as to all issues so triable.

WHEELING HOSPITAL, INC., Plaintiff,

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pro hac vice pending

Counsel for Wheeling Hospital, Inc.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is between Wheeling Hospital, Inc. (the Company) and Louis Longo (Employee).

The Company desires to employ Employee, and Employee desires to be employed by the Company, on the terms and conditions set forth herein.

The parties believe it is in their mutual best interests to make provisions for certain aspects of their relationship during and after the period in which Employee is employed by the Company.

Company and Employee hereby agree as follows:

ARTICLE 1 EMPLOYMENT

Section 1.1 Term of Employment. The Company employs Employee, and Employee accepts employment by the Company, for a continuous one-year term commencing on the date of this agreement.

Section 1.2 Position and Duties. Employee shall be employed in the position of Vice President of Human Resources and shall be subject to the authority of, and shall report to, the Company's Chief Executive Officer. Employee's duties and responsibilities will be as assigned by the Company's Chief Executive Officer from time to time. Employee shall devote his exclusive business time, attention and energies to the business interests of the Company while employed by the Company, except as otherwise specifically approved in writing by or on behalf of the Company's Chief Executive Officer.

ARTICLE 2 COMPENSATION AND OTHER BENEFITS

Section 2.1 Base Salary. Subject to earlier termination as set forth in Section 1.1, above, or as set forth in Article 3, the Company shall pay Employee an annual salary of Three Hundred Fifty Thousand Dollars (\$350,000.00) per year (Base Salary), payable in accordance with the normal payroll practices of the Company. The base salary may increase at any time with the approval of the CEO and the Company shall pay the Employee the annual salary in effect at the time of termination in accordance with the normal payroll practices of the Company. In addition, Employee shall receive a bonus of Fifty Thousand Dollars (\$50,000.00) at the end of each one (1) year period of this agreement.

Section 2.2 Fringe Benefits. During the period in which Employee is employed by the Company, Employee shall be eligible to participate in any benefit plans and programs that the Company may from time to time make available to its employees including, without limitation, any group health and disability insurance plans now offered or hereafter adopted by the Company, and any Company sponsored qualified plans. Employee shall be eligible to participate in the group health plan that is offered to employees who do not reside in the local community. Employee acknowledges that Employee shall have no vested rights in any such plans or programs, except as expressly provided under the terms thereof, and that such plans or programs may be terminated as well as supplemented at the Company sole's discretion.

Section 2.3 Expenses. The Company shall reimburse Employee for all reasonable, authorized and approved expenses incurred by Employee in the course of the performance of Employee's duties and responsibilities pursuant to this agreement and consistent with the Company's policies with respect to travel, entertainment, and miscellaneous expenses, and the requirements with respect to the reporting of such expenses.

ARTICLE 3 TERMINATION

Section 3.1 Termination Without Cause. Subject to the payment of severance as set forth in Section 3.3(a), Company may terminate Employee's employment at any time for any reason or for no reason. Employee may also terminate employment at any time for any reason or for no reason.

Section 3.2 Termination for Cause; Automatic Termination.

(a) **Termination for Cause.** Subject to Section 3.3, the Company may terminate Employee's employment and all of the Company's obligations under this agreement at any time for "Cause" (as defined below) by giving notice to Employee stating the basis for such termination, effective immediately upon the giving of such notice or at such other time thereafter as the Company may designate. For "Cause" means any of the following, as determined by the Company's Chief Executive Officer: (i) Employee has materially breached this agreement or has materially breached any other obligation or duty owed to the Company by virtue of his employment by the Company; (ii) Employee has committed gross negligence or willful misconduct in the performance of Employee's duties for the Company; (iii) Employee has taken any action likely to result in material discredit to or material loss of business, reputation or goodwill of the Company; (iv) Employee has willfully, repeatedly and substantially failed to follow reasonable instructions from the officer and/or body to whom Employee reports concerning the operations or business of the Company; (v) Employee has been convicted of a crime the circumstances of which substantially relate to Employee's position with the Company; (vi) Employee has misappropriated funds or property of the Company; or (vii) Employee has attempted to obtain a personal profit from any transaction in which the Company has an interest, and which constitutes a corporate opportunity of the Company or is adverse to the interests of the Company, unless the transaction was approved in writing in advance by the Company's Chief Executive Officer after full disclosure of all details relating to such transaction.

(b) **Termination by Death or Disability.** Subject to Section 3.3, Employee's employment and all of the Company's obligations under this agreement shall terminate automatically, effective immediately and without any notice being necessary, upon Employee's death or a determination of disability of Employee. For purposes of this agreement, "disability" means the inability of the Employee, due to a physical or mental impairment, to perform the essential duties and functions contemplated by this agreement, with or without a reasonable accommodation. A determination of disability shall be made by the Company's Chief Executive Officer, which shall consult with a physician or physicians satisfactory to such officer, and Employee shall cooperate with the efforts to make such determination. Any such determination shall be conclusive and binding on the parties. Any determination of disability under this (b) is not intended to alter any benefits any party may be entitled to receive under any long-term disability insurance policy carried by either the Company or Employee with respect to Employee, which benefits shall be governed solely by the terms of any such insurance policy.

Section 3.3 Rights Upon Termination.


(a) If Employee's employment is terminated pursuant to Section 3.1, Company shall make severance payments to Employee in an aggregate amount equal to the Employee's Base Salary during the year of such termination, payable in regular installments on the Company's regular salary payment dates for a one-year period following the date of Employee's termination.

(b) If Employee's employment is terminated pursuant to Section 3.2, Employee or Employee's estate shall have no further rights against the Company under this agreement, except to receive (i) any unpaid Base Salary and accrued fringe benefits with respect to the period prior to the effective date of the termination, and (ii) reimbursement of expenses to which Employee is entitled under Section 2.3.

ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Notices. Any and all notices, consents, documents or communications provided for in this agreement shall be given in writing and shall be personally delivered, delivered via facsimile (when transmission is actually received), mailed by registered or certified mail (return receipt requested), sent by overnight delivery (confirmed by receipt), or sent by courier (confirmed by receipt), and addressed as follows, or to such other address as shall be designated in writing:]

To the Company: Wheeling Hospital, Inc.
 1 Medical Park
 Wheeling, West Virginia 26003
 Attention: President

To Employee: Louis Longo
 

Such notice, consent, document or communication shall be deemed given upon personal delivery or receipt at the address of the party stated above, or at any other address designated in writing, except that if delivery is refused or cannot be made for any reason, then such notice shall be deemed given on the third day after it is sent.

Section 4.2 Entire Agreement. This agreement contains the entire understanding and the full and complete agreement of the parties and supersedes and replaces any prior understandings and agreements among the parties with respect to the subject matter hereof.

Section 4.3 Amendment; Headings. This agreement may be altered, amended or modified only in a writing signed by both the parties hereto. Headings included in this agreement are for convenience only and are not intended to limit or expand the rights of the parties hereto.

Section 4.4 Assignability. This agreement and the rights and duties set forth herein may not be assigned by Employee, but may be assigned by the Company, in whole or in part, to

any entity in which the Company or its stockholders own more than 50% of the equity interests. This agreement shall be binding on and inure to the benefit of each party and such party's respective heirs, legal representatives, successors and assigns.

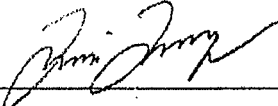
Section 4.5 Severability. The obligations imposed by this agreement are severable and should be construed independently of each other. The invalidity of one provision shall not affect the validity of any other provision. If any provision of this agreement shall be invalid or unenforceable, in whole or in part, or as applied to any circumstance, under the laws of any jurisdiction that may govern for such purpose, then such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, either generally or as applied to such circumstance, or shall be deemed excised from this agreement, as the case may require, and this agreement shall be construed and enforced to the maximum extent permitted by law, as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

Section 4.6 Waiver of Breach. The waiver by either party of the breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 4.7 Governing Law; Construction. This agreement shall be governed by the laws of the State of West Virginia, without regard to any rules of construction concerning the draftsman hereof.


This agreement shall become effective fourteen (14) days after the last date signed by Company and Employee below.

Louis Longo



Date: 11/3/11

Wheeling Hospital, Inc.

By: 

Name:
Title:

Date: 11-3-11