

**WHITE AND WILLIAMS LLP**

BY: Michael O. Kassak, Esquire (MK-9317)  
LibertyView, Suite 400  
457 Haddonfield Road  
Cherry Hill, NJ 08002-2220  
856.317.3600  
kassakm@whiteandwilliams.com  
Attorneys for plaintiff Advanced Directory Sales

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ADVANCED DIRECTORY SALES	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	NO.: 06-CV-810
v.	:	
	:	
ALLENTOWN MEDICAL SERVICES;	:	
AMERICAN WOMEN'S SERVICES;	:	
ASSOCIATES IN	:	
OBSTETRICS/GYNECOLOGY; CK	:	
COMPANY; PROFESSIONAL MEDICAL	:	
SERVICES, P.C.; and STEVEN BRIGHAM,	:	
M.D., individually and as a representative of	:	
ALLENTOWN MEDICAL SERVICES;	:	
AMERICAN WOMEN'S SERVICES;	:	
ASSOCIATES IN	:	
OBSTETRICS/GYNECOLOGY; CK	:	
COMPANY; PROFESSIONAL MEDICAL	:	
SERVICES, P.C., and	:	
ABC COMPANY 1-100	:	
	:	
Defendants.	:	

**NOTICE OF MOTION FOR SUMMARY JUDGMENT**

**PLEASE TAKE NOTICE** that plaintiff, Advanced Directory Sales, through its attorneys White and Williams LLP, will make application to the United States District Court for the District of New Jersey, Camden Vicinage, Mitchell H. Cohen U.S. Courthouse, 1 John F. Gerry Plaza, Camden, New Jersey on **November 16, 2007**, at 9:00 a.m. or as soon

thereafter as counsel may be heard for an order granting summary judgment and dismissing all claims against plaintiff Advanced Directory Sales.

Plaintiff will rely on the annexed brief and supporting exhibits in support of its motion. A proposed form of order is attached.

**WHITE AND WILLIAMS LLP**

Attorneys for plaintiff Advanced Directory Sales

By:   
MICHAEL O. KASSAK

DATED: October 15, 2007

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FOR THE DISTRICT OF NEW JERSEY**

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SERVICES, P.C., and	:	
ABC COMPANY 1-100	:	
	:	
Defendants.	:	

**PLAINTIFF ADVANCED DIRECTORY SALES' BRIEF IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

Michael O. Kassak, Esquire (MK3917)  
WHITE AND WILLIAMS LLP  
LibertyView  
457 Haddonfield Road, Suite 400  
Cherry Hill, NJ 08002-2220  
(856) 317-3600  
Attorneys for Plaintiff

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SERVICES, P.C., and	:	
ABC COMPANY 1-100	:	
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Defendants.	:	

**STATEMENT OF MATERIAL FACTS**

1. This matter arises out of plaintiff Advanced Directory Sales' (hereinafter referred to as "ADS") suit for damages resulting from defendants, Allentown Medical Services, American Women's Services, Associates in Obstetrics/Gynecology; CK Company, Professional Medical Services, P.C. and Steven Brigham, M.D.'s (hereinafter "Brigham

defendants”) failure to pay for advertising services and telephone directory advertising placed through ADS. See plaintiff’s complaint, attached hereto as Exhibit A.

2. ADS is a Certified Marketing Representative that assists businesses in placing yellow page advertisements in multiple telephone directories on a regional and national basis. See Exhibit “A”, paragraph 9, see Brigham defendants’ answer, attached hereto as Exhibit “B”, paragraph 9 and see deposition of James J. Dibease, attached hereto as Exhibit “C”, page 52:14 – 21.

3. The Brigham defendants entered into a contract with ADS wherein ADS agreed to assist the defendants in placing advertising space in various yellow page directories. See Brigham defendants’ amended counterclaim, attached hereto as Exhibit “D”, paragraph 19.

4. Based upon the aforementioned contract, ADS assisted the Brigham defendants with placing yellow page advertising from the mid-1990 until 2003. See Exhibit “A”, paragraph 10, and see Exhibit “D”, paragraph 10.

5. In response to ADS’ lawsuit seeking to recover fees for advertisements placed for the defendants, the Brigham defendants filed a counterclaim for fraud and breach of contract. Specifically, the Brigham defendants allege that ADS represented that: 1) it would cut its normal 30% commission received from yellow pages vendors to 15%, 2) it would receive a significant discount on the placement of yellow page advertisements and pass those discounts on to the Brigham defendants, and 3) the actual cost of advertising to the Brigham defendants would be 50% of the prevailing rate in the industry. See Exhibit “D”, paragraph 3.



6. ADS admits, and in fact contracted with the Brigham defendants, that it would cut its commission by 15%, but only if the Brigham defendants paid invoices within 30 days. See DiBease Deposition, Exhibit “C”, page 65:8 – page 67:19 and see November 16, 1995 contract, attached hereto as Exhibit “F.”

7. Moreover, ADS passed on to the Brigham defendants certain incentive discounts offered by certain publishers of phone books containing yellow page advertising. See ADS’ answer to counterclaim, attached hereto as Exhibit “E”, paragraph 3 and see DiBease Deposition, Exhibit “C”, page 78:9 - 14.

8. Depending on the incentive program offered by such publisher, these discounts at times could reach as high as 50% to 75% of the prevailing rate. Ibid and see June 20, 2002 contract, attached hereto as Exhibit “G.”

9. Although the Brigham defendants received the benefit of some of these publisher discounts when timely payment was made, the Brigham defendants often, including all times relevant to the counterclaim, forfeited such entitlement because of late, or non-existent, payment. Ibid.

10. The Brigham defendants further allege that “they could have received rates lower than that offered by ADS had they utilized the local yellow pages representative rather than ADS...” See Exhibit “D”, paragraph 11.

11. Fact discovery is complete.

12. The Brigham defendants have failed to provide any evidence supporting their claim for damages arising from ADS’ alleged advertising.

13. Dr. Steven Brigham, individually and as a representative of the Brigham defendants, testified:

Q. How much are you claiming that he [, ADS,] owes you in your Counterclaim?

A. I don't even know. Half of what we paid him.

Q. How do you come up with that?

A. Because he said – actually, if you really want to push it, since he promised that we were going to get to pay half of what the local reps were and instead he was charging him double what the local reps were, we probably paid him four times what we should have. And if we paid him four million dollars over the years, I don't know. He may owe us as much as three million dollars.

Q. And what documents do you have to support that?

A. I have almost no documents.

**Q. *How are you going to prove that?***

**A. *You pushed this lawsuit. You know, I liked Jim. We got cheated, but how are we going to prove it. I don't know how we're going to prove it.***

[See portions of Steven Brigham, M.D.'s deposition transcript, attached hereto as Exhibit "H", page 81:7 – page 82:3 (emphasis added).]

14. Furthermore, the Brigham defendants have failed to provide any expert report setting forth the prevailing rate at their alleged time of loss.

15. Without any evidence to support their claim for damages, the Brigham defendants' counterclaim must be dismissed.

## LEGAL ARGUMENT

### A. Summary judgment standard

Summary judgment is to be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” F.R.C.P 56(c). After one party has filed a properly supported summary judgment motion, the party opposing the motion must present sufficient evidence for a reasonable jury to find in its favor. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995).

Alleged factual disputes will not automatically preclude a trial judge from granting a party’s motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). Rather, the lack of genuine issues of material fact will support granting a motion for summary judgment. Id. at 248 (emphasis in original). Facts which will affect the outcome of a party’s claim are material facts. Id. Disputes regarding material facts must be genuine, that is, the disputing parties must present a differing version of facts such that a judge or jury must resolve the issue. Id. at 249.

### B. The Brigham defendants cannot establish the elements of their fraudulent misrepresentation claim, therefore ADS is entitled to summary judgment at to this element of the counterclaim.

Under New Jersey law, the essential elements of fraud are (1) a material representation pertaining to a presently existing or past fact; (2) made with knowledge of the falsity of the representation and with an intention that the other party rely on the representation; and, (3) justifiable reliance on the representation which results in actual damage. Fleming Companies,

Inc. v. Thriftway Medford Lakes, Inc., 913 F.Supp. 837, 844 (D.N.J. 1995). One of the essential elements of a cause of action for fraud is reliance and a plaintiff must demonstrate that reliance upon any representation was justified and reasonable. Id.

According to Alexander v. Cigna Corp. 991 F. Supp. 427 (D.N.J. 1998), New Jersey law provides that “[s]tatements as to future or contingent events, to expectations or probabilities, or as to what will or will not be done in the future, do not constitute misrepresentations, *even though they may turn out to be wrong.*” Id. at 435 (italics added). In order to constitute a “fact” susceptible to an actionable claim of fraud or misrepresentation, the statement’s content must be susceptible of “exact knowledge” at the time it is made. Id. “[V]irtually all of the statements ... us[ing] words such as ‘will,’ ‘plan,’ or ‘expect’ to indicate their future orientation.” Id. at 436. Statements relating to “predictions of the future, *which were believed when made*, cannot serve as a basis for a fraud claim just because they subsequently turn out not to be true.” Id. (italics added).

A claim for fraudulent misrepresentation requires a claimant to demonstrate that it sustained an injury that was caused by the defendant's misrepresentation as an element of the claim. Konover Const. Corp. v. East Coast Const. Services Corp. 420 F.Supp.2d 366, 370 (D.N.J. 2006). To defeat a summary judgment motion, a plaintiff alleging fraud carries the burden of presenting evidence which could permit a reasonable jury to find by clear and convincing evidence the existence of fraud. Viking Yacht Co. v. Composites One LLC, 496 F.Supp.2d 462, 471 (D.N.J. 2007).

Here, the Brigham defendants cannot establish by clear and convincing evidence that fraud occurred or that they were damaged by any alleged fraud. The statements attributed to ADS regarding future events, specifically the deals for future advertising that ADS would

secure, do not constitute misrepresentations, even if the Brigham defendants paid more for advertising than was originally predicted. The Brigham defendants allege that ADS advised it “would normally receive a 30% commission” but would reduce that commission to 15% for the Brigham defendants, that it “would pass” certain volume discounts it received along to the Brigham defendants, and that the cost of the advertising “would be 50% of the prevailing rate in the industry.” See Exhibit “D” at ¶ 3. Even assuming the Brigham defendants could prove that the disputed statements were made and that they turned out to be false, these predictions of future events would not form the basis for a fraudulent misrepresentation claim.

More importantly, the Brigham defendants have not established that they were damaged by the alleged misrepresentations. Advertisements were placed on behalf of the Brigham defendants. The Brigham defendants enjoyed the benefits of that advertising. The Brigham defendants have not produced any expert testimony establishing what the advertising they received should have cost, or more specifically what “the prevailing rate in the industry” was for the advertisements at issue when they were placed. To award the Brigham defendants damages under these circumstances would require undue speculation and provide them with an unjustified windfall.

Because the Brigham defendants have failed to produce evidence establishing how they were damaged by the alleged misrepresentations and because the alleged misrepresentations were insufficient as a matter of law to support an actionable claim of fraud, the Brigham defendants’ fraud counterclaim must be dismissed.

**C. ADS is entitled to summary judgment as to the breach of contract counterclaim because the Brigham defendants have not produced any evidence establishing they have been damaged by the alleged breach.**

A party bringing a claim for breach of contract has the burden of proof to establish all elements of its cause of action, including damages. Cumberland County Improvement Authority v. GSP Recycling Co., Inc. 358 N.J. Super. 484,503 (App. Div. 2003).

If a breach of a binding agreement has been committed and it is certain that damages have resulted, mere uncertainty as to amount of damages does not preclude recovery, however the evidence presented must afford basis for estimating damages with some degree of certainty. Jersey City Redevelopment Agency v. Clean-O-Mat Corp., 289 N.J. Super. 381, 402 (App. Div. 1996); see also Westrich v. McBride, 204 N.J. Super. 550, 557 (Law Div. 1984)(holding that “damages claimed in a breach of contract action must be reasonable, certain and not speculative”).

Like the fraud counterclaim, the Brigham defendants’ breach of contract counterclaim is based upon the alleged oral representation that the Brigham defendants would receive 50% off the prevailing rate in the industry for advertising if the Brigham defendants used ADS. While ADS denies ever broadly representing that the Brigham defendants would receive 50% off the prevailing rate for all advertising if the Brigham defendants used ADS, the Brigham defendants have failed to establish what the “prevailing rate in the industry” was and have failed to establish the difference between the prevailing rate and the amounts the Brigham defendants paid.

Essentially, the Brigham defendants allege that they overpaid for advertising. However, the Brigham defendants have not identified an expert witness who will establish what the prevailing rate was for the various transactions at issue. Absent some evidence from

which a jury could estimate the Brigham defendants' damages with some degree of certainty, the Brigham defendants' claim for breach of contract must fail.

**D. The Brigham defendants' claim for attorney's fees must be dismissed because such an award is not permitted under the New Jersey Rules of Court or any recognized exception to the American Rule.**

Generally, the right of a party or an attorney to recover attorney's fees from another party in a diversity action is a matter of substantive state law. Mitzel v. Westinghouse Elec. Corp., 72 F.3d 414, 417 (3d Cir. 1995). New Jersey generally disfavors the shifting of attorneys' fees and a prevailing party can recover counsel fees only if a statute, court rule, or contract expressly so permits. Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 440 (2001). New Jersey Court Rule 4:42-9 governs the award of counsel fees in litigation and expressly provides limited, enumerated exceptions to the American Rule. None of the exceptions to the American Rule contained in New Jersey Court Rule 4:42-9 apply to the counterclaims.

The general rule is that parties to litigation should bear their own legal costs. Eagle Fire Corp. v. First Ins. Co., 145 N.J. 345, 363 (1996)(emphasis in the original). Recently, in In re: Niles, 176 N.J. 282 (2003), the Supreme Court once again reaffirmed that New Jersey has a strong policy against the shifting of counsel fees, as reflected by its adoption of the "American Rule" which prohibits recovery of counsel fees by the prevailing party against the losing party. Id. at 293-294; see also In re Estate of Lash, 169 N.J. 20, 30 (2001)(New Jersey generally follows the American Rule, which prohibits a litigant from recovering counsel fees from a defendant when the fees were incurred in an action to establish that defendant's liability); Belfer v. Merling, 322 N.J. Super. 124, 141 (App. Div. 1999)(unless attorney's fees are authorized by statute, court rule or contract, they cannot be awarded by a court).

The American Rule simply does not permit the recovery of attorney's fees in a typical breach of contract or misrepresentation case. Therefore, ADS is entitled to summary judgment as to the counterclaimants' claim for attorney's fees.

**E. Reasonable minds cannot differ that counterclaimants cannot produce evidence of wanton and willful conduct or malicious intent on the part of ADS by clear and convincing evidence. Therefore counterclaimants' punitive damage claims must be dismissed.**

The legal standard for punitive damage claims is a matter of state law. Cortes v. University of Medicine and Dentistry of New Jersey, 391 F.Supp.2d 298, 317 (D.N.J. 2005). Generally, in New Jersey claims for punitive damages are governed by the Punitive Damages Act (the "Act"), N.J.S.A. 2A:15:5.9 *et seq.* The Act was signed into law in 1995 in an attempt to curtail suits seeking redress for allegedly malicious conduct that causes no substantial injury. Smith v. Whitaker, 160 N.J. 221, 245 (1999). The Act embodies a "clear legislative mandate . . . to restrict punitive damages, rather than expand them." Smith, 160 N.J. at 248 (Justice Garibaldi, concurring).

The Act states in pertinent part:

[p]unitive damages may be awarded to the plaintiff only if the plaintiff proves, by clear and convincing evidence, that **the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeable might be harmed by those acts or omissions.** This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.

N.J.S.A. 2A:15-5.12.(emphasis added). "Clear and convincing" evidence means that standard of evidence which leaves no serious or substantial doubt about the correctness drawn from the evidence. N.J.S.A. 2A:15-5.10.



This burden of proof is only met where "the trier of fact [has] a firm belief or conviction as to the truth of the allegations sought to be established." In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 339 (App. Div. 1981). Stated differently, it is "evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." In re Jobes, 108 N.J. 394, 407 (1987) (citations omitted). See also In re Commitment of W.H., 324 N.J. Super. 519, 524 (App. Div. 1999); In re Guardianship of J.T., 269 N.J. Super. 172, 190 (App. Div. 1993). "Obviously, the concept of 'clear and convincing' is more stringent than the ordinary civil standard of 'preponderance of the evidence,' and is reserved for the protection of important interests." Caro v. Sher, 296 N.J. Super. 594, 602 (Ch. Div. 1996).

Thus, plaintiffs seeking punitive damages must produce evidence sufficient to meet the heavy burden of either actual malice or wanton and willful disregard. Actual malice is defined as "an intentional wrongdoing in the sense of an evil-minded act." N.J.S.A. 2A:15-5.10. Proof of wanton and willful disregard requires a deliberate act or omission with knowledge of a high degree of probability of harm to another and reckless indifference to the consequences of such act or omission. Id. It is "[s]omething more than the mere commission of a tort . . . There must be circumstances of aggravation or outrage, such as spite or malice, or fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interest of others that his conduct may be called willful or wanton." DiGiovanni v. Pessel, 55 N.J. 188, 190 (1970) (citations omitted). Thus, plaintiffs must show conduct that is "exceptional or outrageous" or "especially egregious." Maiorino v. Schering-Plough Corp., 302 N.J. Super. 323, 353 (App. Div. 1997); Rendine v. Pantzer, 141 N.J. 292,

314 (1995). Summary judgment dismissing claims for punitive damages is appropriate where no direct evidence of malice or wanton and willful conduct is presented. Casamasino v. City of Jersey City, 304 N.J. Super. 226, 245 (App. Div. 1997).

The Act also sets forth the various factors that the trier of fact should consider in determining whether punitive damages should be awarded. The factors include, but are not limited to: (1) the likelihood, at the relevant time, that serious harm would arise from the defendant's conduct; (2) the defendant's awareness or reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct; (3) the conduct of the defendant upon learning that its initial conduct would likely cause harm; and (4) the duration of the conduct or any concealment of it by the defendant. N.J.S.A. 2A:15-5.12(b).

Punitive damages are not available in a breach of contract action. Lo Bosco v. Kure Engineering Ltd., 891 F.Supp. 1020, 1034 (D.N.J. 1995). Furthermore, fraud, standing alone, without some additional aggravating element, will not sustain a claim for punitive damages. Id.

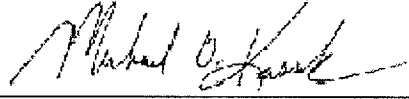
Here, there is no evidence of heightened culpability, malice or outrageous conduct that would support a punitive damages claim against ADS. Therefore, ADS is entitled to summary judgment as to the counterclaimants' punitive damages claims.

**CONCLUSION**

For the reasons set forth above, Advanced Directory Sales respectfully requests that the Court enter an Order dismissing the Brigham defendants' counterclaim.

**WHITE AND WILLIAMS LLP**

Attorneys for plaintiff Advanced Directory Sales

By: 

MICHAEL O. KASSAK

DATED: October 15, 2007

**WHITE AND WILLIAMS LLP**

BY: Chad A. Rutkowski, Esquire

LibertyView

457 Haddonfield Road, Suite 400

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856.317.3600

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ADVANCED DIRECTORY SALES

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Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CAMDEN COUNTY

DOCKET NO.: CAM-L-

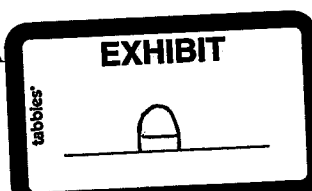
CIVIL ACTION

**COMPLAINT**

LIMITED LIABILITY

**EXHIBIT**

REGISTERED IN PENNSYLVANIA



Plaintiff Advanced Directory Sales, by way of complaint against the above-named defendants, says:

**PARTIES**

1. Plaintiff, Advanced Directory Sales (hereinafter "ADS"), is a corporation formed under the laws of the State of New Jersey maintaining its principle place of business at 330 Sicklerville, NJ 08081.

2. Defendant, Allentown Medical Services, is a corporation formed under the laws of Pennsylvania with a business address of 2200 Hamilton Boulevard, Suite 310, Allentown, Pennsylvania.

3. Defendant, American Women's Services, is a corporation and/or trade name and/or fictitious name. American Women's Services has an address of c/o Julie E. Gabis & Associates, 100 Four Falls Corporate Center, Suite 210, Conshohocken, Pennsylvania.

4. Defendant, Associates in Obstetrics/Gynecology is a corporation formed under the laws of Pennsylvania with an address of c/o Julie E. Gabis & Associates, 100 Four Falls Corporate Center, Suite 210, Conshohocken, Pennsylvania.

5. Defendant, CK Company is a corporation, partnership, limited liability company, limited liability partnership, professional corporation, trade name, fictitious name, or other corporate entity or business designation through which some or all defendants transacted business, are affiliated, and/or are guaranteed by. CK Company has an address of 9864 Ford Road, Perrysburg, Ohio.

6. Defendant, Professional Medical Services, P.C., is a professional corporation organized under the laws of Maryland and maintaining a business address at 224 Groveland Road, Second Floor, Virginia Beach, Virginia.

7. Defendant, Steven Brigham, M.D., individually and as a representative of Allentown Medical Services; American Women's Services; Associates in Obstetrics/Gynecology; CK Company, and Professional Medical Services, P.C., is an individual, a physician licensed in the state of New Jersey, and an owner, officer, shareholder, director, employee or otherwise affiliated with all of the corporate defendants named above. Dr. Brigham maintains a primary business address at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey.

8. Defendants ABC Companies 1-100 are corporations, partnerships, limited liability companies, limited liability partnerships, professional corporations, trade names, fictitious names, or other corporate entities or business designations through which some or all defendants transacted business, are affiliated, and/or are guaranteed by.

### **FACTUAL BACKGROUND**

9. Plaintiff ADS is a telephone directory yellow page advertisement broker in the business of assisting businesses place yellow page advertisements in multiple telephone directories on a regional and national basis.

10. In or about the mid-1990's, ADS met with Steven Brigham, M.D. who sought to place regional yellow page advertisements to support his abortion practice. Dr. Brigham obtained the phone numbers 1-800-ABORTION and 1-888-ABORTION for his practice. Dr. Brigham agreed to pay to ADS the prevailing rate charged by the publishers of the various

telephone directories for ADS services, minus any incentives and/or discounts offered by ADS at its sole discretion.

11. Although Dr. Brigham made it clear that the advertisements were to support his personal abortion practice and that he would be ultimately responsible for the payment of fees charged by ADS, Dr. Brigham did indicate that he ran his practice through numerous corporate and/or partnership entities, and that he would occasionally be affiliated with other practitioners. Dr. Brigham would provide ADS with the names of numerous entities that were authorized to utilize the 1-800 and 1-888 ABORTION phone numbers and indicate the geographic locations in which he wished to place advertisements. Dr. Brigham would then supply ADS with the name of a business where bills for their services were to be sent.

12. For example, early in the relationship Dr. Brigham utilized the company name of "Mohonk Corp." Dr. Brigham authorized the placement of advertisements for businesses with the names "American Women's Services", "A Woman's Right", "A Abortion Appointment Service", "Abortion Care", "American Women's Center", and "Abortion & Birth Control Services" at this time, and instructed ADS to send the bill to "Mohonk Corp" for advertisements placed for those entities. Each of these entities used the "1-800-ABORTION" phone number. The bills would then be paid by several other corporations, including "Professional Practice Management, Inc.", "American Medical Services, P.C.", "Professional Medical Services, P.C.", "The Kindness Corp.", "The Peaceful Corp.", and others. This arrangement persisted for several years without incident.

13. Later Dr. Brigham directed ADS to place advertisements for "A Choice", "American Healthcare Services", "Associates in Obstetrics/Gynecology", "Women's Choice", "Staten Island Women's Services" and "A Abortion Appointment Service", and directed ADS

to send bills for these advertisements to "US Medical Care". Again, these bills were paid without incident.

14. In 2001, Brigham directed ADS to place advertisements using the 1-800 and 1-888-ABORTION phone numbers for "American Women's Services", "Abortion Care", "Allentown Medical Services", "State College Medical Services", "Phillipsburg Women's Services", "A American Women's Services", "A Right to Choose", "American Healthcare Services", "A Woman's Choice", "Abortion", "Pittsburgh Abortion Services", "Associates in Obstetrics/Gynecology", "Abortions to 24 Weeks", and "American Wellness Center". Bills were to be sent to "CK Company" located in Perrysburg, Ohio.

15. Dr. Brigham was billed for these services through a series of ten invoices. A Statement of Account is attached as Exhibit "A". From January 1, 2001 to September 1, 2001, Dr. Brigham and/or his affiliated companies were billed monthly for a total amount of \$1,015,222.94. Dr. Brigham and/or his affiliated companies acknowledged the validity of these bills, making partial payments of \$163,092.51. Dr. Brigham and his affiliated companies were also billed \$35,004.00 on July 1, 2003, against which a \$4,816.00 partial payment was made.

16. However, Dr. Brigham and his affiliated companies are in arrears in the amount of \$882,318.43, plus interest.

**FIRST COUNT**  
(Breach of Contract Against Dr. Brigham)

17. Plaintiff repeats and re-allege each and every allegation contained in the paragraphs above as if the same were set forth more fully at length herein.



18. Dr. Brigham entered into an express oral contract with ADS for the placement of advertisements to further his personal abortion practice. Dr. Brigham also promised to be, and/or is otherwise required to act as, a guarantor of his affiliated companies.

19. Dr. Brigham received the benefit of his bargain with ADS in that he and his affiliated companies placed yellow page advertisements in numerous telephone directories.

20. By failing to pay ADS the remainder of the outstanding bill, Brigham has breached his contractual obligations owed under the oral contract reached with ADS.

21. By virtue of Brigham's breach of contractual obligations, ADS has been harmed in the amount of \$882,318.43, plus interest.

**WHEREFORE**, plaintiff demands judgment in its favor and against defendants in the amount of \$882,318.43 together with interest, attorneys fees, costs of suit, and all other relief this Court finds equitable and just.

**SECOND COUNT**

(Breach of Contract Against Allentown Medical Services;  
American Women's Services; Associates in Obstetrics/Gynecology;  
CK Company, Professional Medical Services, P.C.,  
and ABC Company 1-100)

22. Plaintiff repeats and re-allege each and every allegation contained in the paragraphs above as if the same were set forth more fully at length herein.

23. Dr. Brigham acted at all times both on his own behalf and as an agent or other authorized representative of Allentown Medical Services; American Women's Services; Associates in Obstetrics/Gynecology; CK Company, Professional Medical Services, P.C., and ABC Company 1-100.

24. Dr. Brigham entered into an oral contract with ADS for the placement of yellow page advertising on his own behalf and on behalf of and with the authorization of Allentown Medical Services; American Women's Services; Associates in Obstetrics/Gynecology; CK Company, Professional Medical Services, P.C., and ABC Company 1-100.

25. Allentown Medical Services; American Women's Services; Associates in Obstetrics/Gynecology; CK Company, Professional Medical Services, P.C., and ABC Company 1-100 received the benefit of their bargain with ADS in that they placed yellow page advertisements in numerous telephone directories.

26. Accordingly, Allentown Medical Services; American Women's Services; Associates in Obstetrics/Gynecology; CK Company, Professional Medical Services, P.C., and ABC Company 1-100 are jointly and severally liable to ADS for the outstanding invoiced amount of \$882,318.43, plus interest.

**WHEREFORE**, plaintiff demands judgment in its favor and against defendants in the amount of \$882,318.43 together with interest, attorneys fees, costs of suit, and all other relief this Court finds equitable and just.

**THIRD COUNT**

(Quasi-Contract Against All Defendants)

27. Plaintiff repeats and re-allege each and every allegation contained in the paragraphs above as if the same were set forth more fully at length herein.

28. All defendants received a benefit from ADS in that yellow page advertising was placed in numerous phone directories identifying their businesses.

29. It would be inequitable and unjust to allow defendants to have received that benefit without paying the fair market value for those services.

30. The amounts invoiced by ADS are no more than the prevailing rate charged by the applicable phone directory publishers, and in some cases are below fair market value.

31. Accordingly all defendants are jointly and severally liable to ADS for the amount of \$882,318.43 plus interest.

**WHEREFORE**, plaintiff demands judgment in its favor and against defendants in the amount of \$882,318.43 together with interest, attorneys fees, costs of suit, and all other relief this Court finds equitable and just.

**JURY DEMAND**

Plaintiff Advanced Directory Sales demands a trial by jury.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Plaintiff hereby designates Chad A. Rutkowski, Esquire as trial counsel in this matter.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

Pursuant to Rule 4:5-1, I hereby certify that this matter is not the subject of any other action pending in any other court, or of a pending arbitration proceeding.

**WHITE AND WILLIAMS LLP**  
Attorneys for Plaintiff

By:   
Chad A. Rutkowski, Esquire

Dated: January 11, 2006

1164

Date: January 10, 2004

To: CK Company  
 Judith Fitch  
 9864 Ford Road  
 Perrysburg, OH 43551



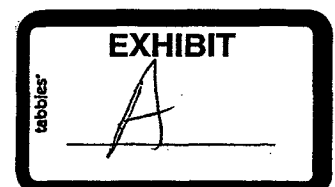
## Statement of Account

Date of Invoice	Invoice #	Total Amount	Payments Applied	Amount Due
01/01/01	13043	\$236,709.19	\$159,731.51	\$ 76,977.68
02/01/01	13134	\$36,445.50	\$0.00	\$ 36,445.50
03/01/01	13313	\$11,861.00	\$0.00	\$ 11,861.00
04/01/01	13318	\$15,943.50	\$0.00	\$ 15,943.50
05/01/01	13402	\$100,006.50	\$0.00	\$ 100,006.50
06/01/01	13495	\$90,455.00	\$0.00	\$ 90,455.00
07/05/01	13626	\$112,530.05	\$0.00	\$ 112,530.05
08/01/01	13699	\$171,411.00	\$0.00	\$ 171,411.00
09/01/01	13790	\$239,861.20	\$3,361.00	\$ 236,500.20
07/01/03	15342	\$35,004.00	\$4,816.00	\$ 30,188.00
<b>Total Amount Due:</b>				<b>\$ 882,318.43</b>

**Make checks payable to:**

Advanced Directory Sales, Inc.  
 330 Sicklerville Road  
 Sicklerville, NJ 08081  
 (856) 629-2304  
 Fax (856) 629-0686

Please disregard this statement if full payment has been made.





a fictitious name owned by Defendant Associates in Obstetrics/Gynecology with a business address c/o Julie E. Gabis & Associates. The remaining allegations of this paragraph are denied.

4. Admitted in part, denied in part. Defendant Associates in Obstetrics/Gynecology denies that the current address of Julie E. Gabis & Associates is the address listed in this paragraph. The remaining allegations of this paragraph are admitted.
5. Denied.
6. Admitted.
7. Admitted in part, denied in part. Defendant Steven Brigham has, at all times, acted as a representative of some or all of the named defendants, he is a physician licensed to practice medicine in the State of New Jersey and is a corporate officer of Defendants Allentown Medical Services, and Associates in Obstetrics/Gynecology. Defendant Brigham also admits that one of his business addresses is located at 1 Alpha Ave., Suite 27, Voorhees, NJ. The remaining allegations of this paragraph are denied.
8. Denied.
9. Admitted in part, denied in part. Defendants admit that plaintiff ADS is in the business of placing yellow pages advertisements in multiple telephone directories on a regional and national basis. The remaining allegations of this paragraph are denied.
10. Denied as stated. Defendants admit that in the 1990s, after ADS's repeated sales calls, Defendant Brigham met with ADS representative Jim DiBease who was acting within the course and scope of his employment at ADS. DiBease represented that as a regional yellow pages advertising broker, ADS could place yellow pages ads for the Defendants at a significantly reduced rate than the local yellow pages brokers. Mr. DiBease further

indicated that as a regional broker, ADS received significant discounts from the yellow page advertisements and ADS would pass along those significant savings to defendants. DiBease further represented that the effect of these discounts was that Defendants would pay ADS only 50% of the prevailing rates for yellow pages advertising. Defendant specifically deny the characterization of the communications in this paragraph and also deny that Defendants agreed to pay the prevailing rate for advertising.

11. Denied as stated. Defendants admit that based upon ADS's representations, the corporate defendants provided information to ADS which ADS would use to place the advertisements for some of the corporate defendants. Defendants further admit that all services provided by ADS have been paid for in full and, Defendants believe and therefore aver that they have paid significantly more than the actual value of the services provided by ADS. The remaining allegations of this paragraph are denied.
12. Denied as stated. Defendants admit that through the course of dealings between Defendants and ADS, different entities paid for ADS's services depending upon the geographical location of the advertisements. Defendants further admit that all services provided by ADS have been paid for in full and, Defendants believe and therefore aver that they have paid significantly more than the actual value of the services provided by ADS. The remaining allegations of this paragraph are denied.
13. Denied as stated. Defendants admit that through the course of dealings between Defendants and ADS, different entities paid for ADS's services. Defendants further admit that all services provided by ADS have been paid for in full and, Defendants believe and therefore aver that they have paid significantly more than the actual value of the services provided by ADS. Defendants specifically deny that they ever received a bill for ADS's

services and specifically dispute the authenticity of the invoice attached to the Complaint as exh. A. The remaining allegations of this paragraph are denied.

14. Denied as stated. Defendants admit that through the course of dealings between Defendants and ADS, different entities paid for ADS's services. Defendants further admit that all services provided by ADS have been paid for in full and, Defendants believe and therefore aver that they have paid significantly more than the actual value of the services provided by ADS. Defendants specifically deny that they ever received a bill for ADS's services and specifically dispute the authenticity of the invoice attached to the Complaint as exh. A. The remaining allegations of this paragraph are denied.
15. Denied as stated. Defendants admit that they have paid significantly more than the actual value of the services provided by ADS. Defendants specifically deny that they ever received a bill for ADS's services and specifically dispute the authenticity of the invoice attached to the Complaint as exh. A.
16. Denied.

**FIRST COUNT**  
**(Breach of Contract Against Dr. Brigham)**

17. Defendant Brigham incorporates herein by reference his responses to the previous paragraphs as if set forth at length herein
18. Denied.
19. Denied.
20. Denied.
21. Denied.
- 22.



WHEREFORE, Defendant Steven Brigham respectfully requests that the first Count of the Complaint be dismissed and that he be awarded attorneys' fees and costs of suit.

**SECOND COUNT**

**(Breach of Contract Against Allentown Medical Services;  
American Women's Services; Associates in Obstetrics/Gynecology;  
Professional Medical Services, P.C.)**

23. Defendants incorporate herein by reference their responses to the previous paragraphs as if set forth at length herein.
24. Admitted in part, denied in part. Defendants admit that to the extent that Dr. Brigham interacted in any way with ADS, he did so on behalf of some or all of the named defendants and never acted in his individual capacity. Defendants deny that Dr. Brigham acted on behalf of ABC Company 1-100. The remaining allegations of this paragraph are denied.
25. Denied.
26. Denied as stated. Defendants have paid for any and all benefits received from ADS and, in fact, believe that they have overpaid ADS for services rendered. Defendants deny the remaining allegations of this paragraph.
27. Denied.

WHEREFORE, Defendants respectfully request that the Second Count of the Complaint be dismissed and that they be awarded attorneys' fees and costs of suit.

**THIRD COUNT**

**(Quasi-Contract Against All Defendants)**

28. Defendants incorporate herein by reference their responses to the previous paragraphs as if set forth at length herein.

29. Denied as stated. Defendants have paid for any and all benefits received from ADS and, in fact, believe that they have overpaid ADS for services rendered. Defendants deny the remaining allegations of this paragraph.
30. Denied as stated. Defendants have paid for any benefits received from ADS and, in fact, believe that they have overpaid ADS for services rendered. Defendants deny the remaining allegations of this paragraph.
31. Denied.
32. Denied.

WHEREFORE, Defendants respectfully request that the Third Count of the Complaint be dismissed and that they be awarded attorneys' fees and costs of suit.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because they were not filed within the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the Court lacks personal jurisdiction over one or more of the defendants.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs claims are barred, in whole or in part, because it has failed to state claims upon which relief may be granted.

**SIXTH AFFIRMATIVE DEFENSE**

\_\_\_\_\_ Defendants are entitled to a set off against any amounts this Court determines they owe to Plaintiff because Defendants were charged more than the prevailing rate and three or four times the represented rate for each advertisement placed by ADS, in violation of ADS's promises and representations.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because of its fraudulent misrepresentations to Defendants.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because it has been paid in full for all services rendered.

**NINTH AFFIRMATIVE DEFENSE**

To the best of Defendants' knowledge, Defendant CK Company is not a legal entity that is capable of being sued.

**COUNTERCLAIM**

Defendants, Allentown Medical Services, Professional Medical Services, P.C., and Associates in Obstetrics/Gynecology bring the following counterclaims against Plaintiff/counterclaim defendant ADS as follows:

1. In the early 1990s, ADS representative James DiBease made repeated sales calls to Steven Brigham in his capacity as an officer and/or corporate representative for one or

more of the counterclaim Plaintiffs in an attempt to get one or more of the Counterclaim plaintiffs to utilize ADS's services.

2. At all time relevant to these counterclaims, DiBease was an officer, shareholder, employee or agent of ADS and was acting within the course and scope of his employment.
3. When DiBease met with Defendant Brigham, who was acting on behalf of the counterclaim plaintiffs, DiBease made several specific representations regarding the price of the contracts for the placement of yellow pages advertising. These representations included, but were not limited to:
  - a. Representations that ADS would normally receive a 30% commission from the yellow pages vendors but if the counterclaim plaintiffs did business with ADS, it would cut its commissions to 15% and lower the price to counterclaim plaintiffs by 15%, and
  - b. Representations that because ADS was a national broker rather than a local broker, it would receive a significant discount on the placement of yellow page advertisements, and ADS would pass those discounts along to the counterclaim Plaintiffs, and
  - c. Representations that the actual cost to the counterclaim Plaintiffs would be 50% of the prevailing rate in the industry.
4. The counterclaim plaintiffs relied upon ADS's representations and began doing business with ADS as a direct result of these representations.
5. At the time that ADS made the representations set forth above, the representatives were false and/or ADS knew or should have known them to be false.

6. ADS made the representations set forth above in order to induce the counterclaim plaintiffs to contract with ADS to place yellow pages advertisements.
7. ADS's representations did, in fact, induce the counterclaim plaintiffs to enter into verbal contracts with ADS to their detriment.
8. During the course of dealings between the parties, the counterclaim plaintiffs never received any contracts, written invoices or statements reflecting money due. Rather, the counterclaim plaintiffs would be informed at the time of the placement of the ads how much such ads would cost and would then issue a check or checks to ADS.
9. Between the years 1997 and the present, the counterclaim plaintiffs paid to ADS approximately \$3.5 million.
10. In or about October 2001, counterclaim plaintiffs utilized the services of a local sales representative to place the yellow pages advertisements for their businesses and learned, for the first time, that ADS had fraudulently misrepresented the pricing structure. The counterclaim plaintiffs also learned that ADS was charging them more, and in some cases double, the prevailing rates.
11. The counterclaim plaintiffs further learned that they could have received rates lower than that offered by ADS had they utilized the local yellow pages representatives rather than ADS, contrary to ADS's representations..
12. The counterclaim Plaintiffs relied on ADS's misrepresentations to their detriment and have suffered harm as a result.

**COUNTERCLAIM COUNT I  
FRAUD**

13. Counterclaim plaintiffs incorporate by reference their answers and allegations detailed

above, as if set forth at length herein.

14. ADS made fraudulent representations to the counterclaim plaintiffs in an attempt to induce the counterclaim plaintiffs to do business with it.
15. The counterclaim plaintiffs relied upon those representations to their detriment.
16. At the time ADS made the representations, they were false and known to be false by ADS.
17. As a result of ADS's fraud, the counterclaim plaintiffs have suffered harm.

WHEREFORE, the counterclaim plaintiffs seek the following relief:

- a. Order an accounting of the services provided by ADS to the counterclaim plaintiffs from the inception of each contractual relationship to the present;
- b. Order an accounting of the payments that ADS received from the counterclaim plaintiffs from the inception of each contract to the present;
- c. Order refund of all amounts in excess of that which was promised by ADS from the inception of each contract to the present;
- d. Order ADS to pay counterclaim plaintiffs punitive damages;
- e. Order ADS to pay counterclaim plaintiffs the costs and expenses of this litigation, including reasonable attorneys' fees and costs; and
- f. Grant counterclaim plaintiffs such further legal and equitable relief as the Court may deem just and proper.

#### **COUNTERCLAIM COUNT II BREACH OF CONTRACT**

18. Counterclaim plaintiffs incorporate by reference their answers and allegations detailed above, as if set forth at length herein.

19. Counterclaim plaintiffs entered into a contract for advertising space in Yellow Book through ADS.
20. Under the terms of that contract, ADS provided the Counterclaim plaintiffs that they would receive 50% off of the prevailing rate for advertising if they used ADS.
21. Pursuant to the terms of that contract, counterclaim plaintiffs placed ads through ADS but did not receive 50% off of the prevailing rate.
22. ADS breached its contract with counterclaim plaintiffs, as a result of which the Counterclaim plaintiffs have sustained damages in an amount to be determined.

WHEREFORE, counterclaim plaintiffs demand judgment in their favor and against ADS for all damages they have sustained by virtue of ADS's breach of contract, together with interest, an accounting of the monies paid, attorneys fees, costs of suit, and all other relief this Court finds equitable and just.

**DESIGNATION OF TRIAL COUNSEL**

Please take notice that Dena B. Calo is herewith designated as trial counsel.

**JURY DEMAND**

Defendants and counterclaim plaintiffs demands a trial by jury.

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

**GALLAGHER, SCHOENFELD, SURKIN  
CHUPEIN & DEMIS, P.C.**

Date: March 28, 2006

By:                     /s/                      
DENA B. CALO



**COPY**

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

- - -

ADVANCED DIRECTORY SALES, : CIVIL ACTION NO.  
Plaintiff(s) : 06-CV-810

VS. :

ALLENTOWN MEDICAL SERVICES, :  
AMERICAN WOMEN'S SERVICES, :  
ASSOCIATES IN :  
OBSTETRICS/GYNECOLOGY, CK :  
COMPANY, PROFESSIONAL MEDICAL :  
SERVICES, P.C. and STEVEN :  
BRIGHAM, M.D., individually :  
and as a representative of :  
ALLENTOWN MEDICAL SERVICES, :  
AMERICAN WOMEN'S SERVICES, :  
ASSOCIATES IN :  
OBSTETRICS/GYNECOLOGY, CK :  
COMPANY, PROFESSIONAL MEDICAL :  
SERVICES, P.C. and ABC COMPANY :  
1-100. :

Defendant(s) :

- - -

Friday, June 1, 2007  
Cherry Hill, New Jersey

ORAL DEPOSITION OF JAMES J. DiBEASE

DelCASALE, CASEY, MARTIN & MANCHELLO  
Registered Professional Reporters  
Eight Penn Center Plaza  
Suite 402 - 1628 JFK Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 568-2211 (856) 468-4547



James J. DiBease

1 in because at that time, back then, they had  
2 multiple publishers within Verizon, Bell Atlantic  
3 at that time.

4 Q. Does the publisher have -- who actually  
5 publishes that, does that have any effect on your  
6 customer one way or the other, or that's just  
7 something, part of your dealing with Verizon?

8 A. Depends on what books it goes in, yes,  
9 because it could be a Donnelley book or -- is that  
10 what you mean, the question by that? I'm  
11 misunderstanding that question then.

12 Q. Well, what is Publisher 6 -- 0633?

13 A. That's a Bell Atlantic number.

14 Q. Oh, okay. That answers my question.  
15 Thank you. Directory number we've covered. Issue  
16 date we've covered. Life we've covered.

17 Second line. What is CMR and looks  
18 like a number sign?

19 A. That's CMR number. That's our number.

20 Q. What does CMR stand for; do you know?

21 A. Certified marketing rep.

22 Q. Thank you. Client number we've covered.

23 What is NAT with the "A" underneath it?

24 A. Means it's a national client, "A" client.

James J. DiBease

1 Q. Then we'll go to the discounts next.

2 A. Okay.

3 MR. KASSAK: Could we go off the  
4 record for a second?

5 MR. SURKIN: Yep.

6 (Discussion held off the record.)

7 BY MR. SURKIN:

8 Q. Off the record, your lawyer suggested that  
9 I ask a different question so I'm going to follow  
10 his suggestion and ask you what financial  
11 discounts -- what financial incentives did you  
12 offer to Dr. Brigham's -- for his advertising of  
13 his companies?

14 A. 15 percent discount off our commission if  
15 he paid within 30 days.

16 Q. Okay. We've looked at documents that show  
17 your commission was 22 1/2 percent --

18 A. Yeah.

19 Q. -- at the particular time that we looked  
20 at those documents?

21 A. Yes.

22 Q. What was the -- was the 15 percent  
23 calculated on the gross amount or was the 15  
24 percent calculated on the commission amount?

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(215) 568-2211 (856) 468-4547

James J. DiBease

1 A. Gross amount.

2 Q. On the gross amount. So in the example of  
3 ADS-1 where the bill -- the gross amount charge  
4 was \$612 --

5 A. Yes.

6 Q. -- you would offer him -- and your  
7 commission was \$137.70 -- you offered Dr. Brigham  
8 essentially 15 percent reduction on the 612?

9 A. Yes.

10 Q. So that your commission in that case would  
11 be 7 1/2 percent?

12 A. Yes.

13 Q. Okay. Was this offer to Dr. Brigham in  
14 writing?

15 A. Which account of Dr. Brigham's are you  
16 speaking about?

17 Q. Any of them.

18 A. Yes.

19 Q. Did you offer this discount on all of his  
20 accounts?

21 A. No.

22 Q. On which accounts did you offer this  
23 discount?

24 (Dr. Brigham entered the

James J. DiBease

1 proceeding.)

2 THE WITNESS: You talking client  
3 numbers? You talking client numbers; are  
4 you talking accounts?

5 BY MR. SURKIN:

6 Q. Well, you tell me. I don't -- they're  
7 your discounts so I don't know.

8 A. They were offered on Client No. 11 --  
9 Professional Practice -- Client No. 1116.

10 Q. Uh-huh.

11 A. 1147, 1163, 1164, and not on 1165.

12 Q. What was 1165?

13 A. Virginia Women's Medical.

14 Q. Were the other numbers that you've listed,  
15 were those all of the other clients of yours that  
16 were affiliated with Dr. Brigham?

17 A. Best of my memory, yes.

18 Q. So you offered a discount on everything  
19 but Virginia Women's Medical?

20 A. Yes.

21 Q. Did you offer any other discount of  
22 Virginia Women's Medical or any other incentive?

23 A. The publisher incentives.

24 Q. Now, the offer of the 15 percent discount,

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James J. DiBease

1 about that he could save money by going through  
2 you?

3 A. Compared to whom?

4 Q. Compared to dealing directly with the  
5 publishers.

6 A. Yes.

7 Q. You did? When did you tell him that?

8 A. Different times.

9 Q. And what did you tell him?

10 A. For example, the Yellow Book, the last  
11 directories that we did with him, they gave us a  
12 75 percent discount to offer to Dr. Brigham if he  
13 placed a certain amount of directory advertising  
14 with us to place through Yellow Book.

15 Q. Any other time?

16 A. Yes.

17 Q. When? Well, when was the 75 percent; what  
18 timeframe are we talking about?

19 A. I'm not sure.

20 Q. Could I ask you what you're looking at?

21 A. Application of checks received for 1164.  
22 You asked for a year. I'm looking for a year now.

23 Q. Go ahead.

24 A. I have to find it. 2003, I would think,



employee or agent of ADS and was acting within the course and scope of his employment.

3. When DiBease met with Defendant Brigham, who was acting on behalf of the counterclaim plaintiffs, DiBease made several specific representations regarding the price of the contracts for the placement of yellow pages advertising. These representations included, but were not limited to:
  - a. Representations that ADS would normally receive a 30% commission from the yellow pages vendors but if the counterclaim plaintiffs did business with ADS, it would cut its commissions to 15% and lower the price to counterclaim plaintiffs by 15%, and
  - b. Representations that because ADS was a national broker rather than a local broker, it would receive a significant discount on the placement of yellow page advertisements, and ADS would pass those discounts along to the counterclaim Plaintiffs, and
  - c. Representations that the actual cost to the counterclaim Plaintiffs would be 50% of the prevailing rate in the industry.
4. The counterclaim plaintiffs relied upon ADS's representations and began doing business with ADS as a direct result of these representations.
5. At the time that ADS made the representations set forth above, the representations were false and/or ADS knew or should have known them to be false.
6. ADS made the representations set forth above in order to induce the counterclaim plaintiffs to contract with ADS to place yellow pages advertisements.
7. ADS's representations did, in fact, induce the counterclaim plaintiffs to enter into verbal



contracts with ADS to their detriment.

8. During the course of dealings between the parties, most of the counterclaim plaintiffs never received any contracts, written invoices or statements reflecting money due. Rather, the counterclaim plaintiffs would be informed at the time of the placement of the ads how much such ads would cost and would then issue a check or checks to ADS. Only the Virginia Beach office received any written invoices.
9. Between the years 1997 and the present, the counterclaim plaintiffs paid to ADS approximately \$3.5 million.
10. In or about October 2001, counterclaim plaintiffs began to utilize the services of a local sales representative to place the yellow pages advertisements for their businesses and as a result, began to suspect that ADS was overcharging them. In or around 2003, the counterclaim plaintiffs learned that ADS had fraudulently misrepresented the pricing structure, and was charging them more, and in some cases double, the prevailing rates.
11. The counterclaim plaintiffs further learned that they could have received rates lower than that offered by ADS had they utilized the local yellow pages representatives rather than ADS, contrary to ADS's representations..
12. The counterclaim Plaintiffs relied on ADS's misrepresentations to their detriment and have suffered harm as a result.

#### **COUNTERCLAIM COUNT I FRAUD**

13. Counterclaim plaintiffs incorporate by reference their answers and allegations detailed above, as if set forth at length herein.

14. ADS made fraudulent representations to the counterclaim plaintiffs in an attempt to induce the counterclaim plaintiffs to do business with it.
15. The counterclaim plaintiffs relied upon those representations to their detriment.
16. At the time ADS made the representations, they were false and known to be false by ADS.
17. As a result of ADS's fraud, the counterclaim plaintiffs have suffered harm.

WHEREFORE, the counterclaim plaintiffs seek the following relief:

- a. Order an accounting of the services provided by ADS to the counterclaim plaintiffs from the inception of each contractual relationship to the present;
- b. Order an accounting of the payments that ADS received from the counterclaim plaintiffs from the inception of each contract to the present;
- c. Order refund of all amounts in excess of that which was promised by ADS from the inception of each contract to the present;
- d. Order ADS to pay counterclaim plaintiffs punitive damages;
- e. Order ADS to pay counterclaim plaintiffs the costs and expenses of this litigation, including reasonable attorneys' fees and costs; and
- f. Grant counterclaim plaintiffs such further legal and equitable relief as the Court may deem just and proper.

**COUNTERCLAIM COUNT II  
BREACH OF CONTRACT**

18. Counterclaim plaintiffs incorporate by reference their answers and allegations detailed above, as if set forth at length herein.
19. Counterclaim plaintiffs entered into a contract for advertising space in various Yellow

Pages through ADS.

20. Under the terms of that contract, ADS provided the Counterclaim plaintiffs that they would receive 50% off of the prevailing rate for advertising if they used ADS.
21. Pursuant to the terms of that contract, counterclaim plaintiffs placed ads through ADS but did not receive 50% off of the prevailing rate.
22. ADS breached its contract with counterclaim plaintiffs, as a result of which the Counterclaim plaintiffs have sustained damages in an amount to be determined.

WHEREFORE, counterclaim plaintiffs demand judgment in their favor and against ADS for all damages they have sustained by virtue of ADS's breach of contract, together with interest, an accounting of the monies paid, attorneys fees, costs of suit, and all other relief this Court finds equitable and just.

**DESIGNATION OF TRIAL COUNSEL**

Please take notice that Dena B. Calo is herewith designated as trial counsel.

**JURY DEMAND**

Defendants and counterclaim plaintiffs demands a trial by jury.

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

GALLAGHER, SCHOENFELD, SURKIN  
CHUPEIN & DEMIS, P.C.

Date: November 14, 2006

By:                     /s/                      
SUSAN R. FIORENTINO

**WHITE AND WILLIAMS LLP**

BY: Chad A. Rutkowski, Esquire [CR 9972]

LibertyView

457 Haddonfield Road, Suite 400

Cherry Hill, NJ 08002-2220

Telephone: 856.317.3600

Facsimile: 856-317-1342

rutkowskic@whiteandwilliams.com

Attorneys for plaintiff, Advanced Directory Sales

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ADVANCED DIRECTORY SALES : CIVIL ACTION

Plaintiffs,

NO.: 06-CV-810

v.

ALLENTOWN MEDICAL SERVICES;  
AMERICAN WOMEN'S SERVICES;  
ASSOCIATES IN  
OBSTETRICS/GYNECOLOGY; CK  
COMPANY; PROFESSIONAL MEDICAL  
SERVICES, P.C.; and STEVEN BRIGHAM,  
M.D., individually and as a representative of  
ALLENTOWN MEDICAL SERVICES;  
AMERICAN WOMEN'S SERVICES;  
ASSOCIATES IN  
OBSTETRICS/GYNECOLOGY; CK  
COMPANY; PROFESSIONAL MEDICAL  
SERVICES, P.C., and  
ABC COMPANY 1-100

Defendants.

**PLAINTIFF'S ANSWER TO THE COUNTERCLAIM OF DEFENDANTS  
ALLENTOWN MEDICAL SERVICES, PROFESSIONAL MEDICAL SERVICES, P.C.,  
AND ASSOCIATES IN OBSTETRICS/GYNECOLOGY  
WITH AFFIRMATIVE DEFENSES AND JURY DEMAND**

Plaintiff Advanced Directory Sales (hereinafter "ADS"), by and through undersigned counsel, hereby answer the counterclaim of Defendants, Allentown Medical Services, Professional Medical Services, P.C., and Associates in Obstetrics/Gynecology, as follows:

**EXHIBIT**

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1. Admitted in part and denied in part. It is admitted that James DiBease was a representative of ADS in early 1990. All remaining averments are denied.

2. Admitted.

3. a-c. Denied in part and admitted in part. At all relevant times, defendant Brigham was acting individually and as a representative of all defendants. It is admitted that from time to time ADS offered to pass on to all defendants certain incentive discounts offered by certain publishers of phone books containing yellow page advertising. Depending on the incentive program offered by such publisher, these discounts at times could reach as high as 50% of the prevailing rate for the first year of placement with a new directory. Defendants agreed and understood, however, that such discounts were contingent on timely payment by defendants and/or were otherwise to be extended at the sole discretion of ADS. Although defendants received the benefit of some of these publisher discounts when timely payment was made, defendants often, including all times relevant to the counterclaim, forfeited such entitlement because of late, or non-existent, payment. All remaining allegations of this paragraph are denied.

4. Denied.

5. Denied.

6. Denied.

7. Admitted in part and denied in part. It is admitted that the Brigham defendants entered into verbal contracts with ADS. All remaining allegations are denied.

8. Denied.

9. After reasonable investigation, ADS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein; therefore, same are denied and strict proof is demanded at the time of trial.

10. Denied.

11. Denied.

12. Denied.

**COUNTERCLAIM COUNT I  
FRAUD**

13. ADS repeats and realleges the answers set forth in the foregoing paragraphs as if fully set forth herein.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

**WHEREFORE**, plaintiff, ADS, demands judgment in its favor dismissing this Count of the counterclaim with prejudice, together with an award of attorney's fees, costs of suit and such other relief as the Court deems appropriate.

**COUNTERCLAIM COUNT II  
BREACH OF CONTRACT**

18. ADS repeats and realleges the answers set forth in the foregoing paragraphs as if fully set forth herein.

19. Admitted.

20. Denied.

21. Denied.

22. Denied.

**WHEREFORE**, plaintiff, ADS, demands judgment in its favor dismissing this Count of the counterclaim with prejudice, together with an award of attorney's fees, costs of suit and such other relief as the Court deems appropriate.

**GENERAL DENIAL**

To the extent not specifically admitted, ADS denies each and every allegation in the counterclaim, whether or not hereinabove quoted.

**PRAYER FOR RELIEF**

ADS denies that the Brigham defendants are entitled to the judgment and other relief sought in their counterclaim and demands dismissal of each count with prejudice.

**AFFIRMATIVE DEFENSES**

1. The counterclaim fails to state a claim upon which relief can be granted. ADS respectfully reserves the right to move to dismiss the counterclaim.
2. ADS hereby asserts the defenses of estoppel, waiver and release.
3. ADS hereby asserts the defense of set-off.
4. ADS asserts the defense of ratification.
5. ADS pleads the defenses of laches.

6. ADS asserts the defense of the statute of limitations.
7. ADS pleads the defenses of unclean hands.
8. Counterclaimants failed to mitigate damages as required by law.
9. Counterclaimants' claims are barred, in whole or in part, because the alleged matters they complain of were adequately disclosed to them and/or they failed to read documents that were provided to them, and which disclosed such matters.
10. At all relevant times, ADS and its representatives acted in good faith and did not make any false or misleading statements to the counterclaimants, and, at all times, acted without the intent to manipulate, deceive or defraud.
11. The counterclaim fails to allege a claim for which punitive damages can be recovered.
12. Any award of punitive damages would violate the constitutions of the United States and the State of New Jersey.
13. The counterclaim fails to allege a claim for which statutory damages can be recovered.
14. Any award of statutory damages would violate the constitutions of the United States and the State of New Jersey.
15. The counterclaim is barred, in whole or in part, by the doctrine of *in pari delicto*.
16. Any reliance by the Brigham defendants, if any, on any alleged misrepresentations or omissions, which ADS does not concede, was not reasonable.



17. Counterclaimants' claims are barred in whole or in part, by their failure provide the full consideration as required by the contract.

18. Counterclaimants' claims are barred or reduced by virtue of the failure of counterclaimants to satisfy necessary conditions precedent and/or subsequent.

19. ADS substantially performed any contractual duty owed to counterclaimants.

20. The counterclaim fails to plead the counterclaimants' fraud-based claims with the requisite particularity.

21. Defendants have paid no more than fair market value for services provided to them by ADS.

22. The allegations contained in the counterclaim against ADS constitute a frivolous claim, in whole or in part, pursuant to N.J.S.A. 2A:15-59.1, and ADS reserves the right to make a claim for relief under said provision.

23. The allegations contained in the counterclaim against ADS violate Fed. R. Civ. Proc. 11(b), in whole or in part, and ADS reserves the right to make a claim for sanctions under Fed. R. Civ. Proc. 11(c).

24. ADS reserves the right to amend and/or supplement these affirmative defenses.

#### **JURY DEMAND**

Plaintiff Advanced Directory Sales demands a trial by jury.

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Plaintiff hereby designates Chad A. Rutkowski, Esquire as trial counsel in this matter.

**CERTIFICATION PURSUANT TO L.Civ. R. 11.2**

Pursuant to L. Civ. R. 11.2, I hereby certify that this matter is not the subject of any other action pending in any other court, or of a pending arbitration proceeding.

**WHITE AND WILLIAMS LLP**  
Attorneys for Plaintiff

By: 

Chad A. Rutkowski, Esquire

Dated: April 20, 2006

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ADVANCED DIRECTORY SALES	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	NO.: 06-CV-810
	:	
ALLENTOWN MEDICAL SERVICES;	:	
AMERICAN WOMEN'S SERVICES;	:	
ASSOCIATES IN	:	
OBSTETRICS/GYNECOLOGY; CK	:	
COMPANY; PROFESSIONAL MEDICAL	:	
SERVICES, P.C.; and STEVEN BRIGHAM,	:	
M.D., individually and as a representative of	:	
ALLENTOWN MEDICAL SERVICES;	:	
AMERICAN WOMEN'S SERVICES;	:	
ASSOCIATES IN	:	
OBSTETRICS/GYNECOLOGY; CK	:	
COMPANY; PROFESSIONAL MEDICAL	:	
SERVICES, P.C., and	:	
ABC COMPANY 1-100	:	
	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

The undersigned certifies that Plaintiff's Answer to the Counterclaim of Defendants has been filed electronically and is available for viewing and downloading from the ECF system.

The undersigned further certifies that, on the below date, he caused to be served true and correct copies of the foregoing Answer on the below counsel/parties by U.S. postal mail IF THEY DID NOT RECEIVE SAME ELECTRONICALLY.

Ron Surkin, Esquire  
Dena Calo, Esquire  
Sue Fiorentino, Esquire  
Gallagher, Schoenfeld, Surkin, Chupein, DeMis  
25 West Second Street  
P.O. Box 900  
Media, Pa 19063

LIMITED LIABILITY PARTNERSHIP REGISTERED IN PENNSYLVANIA

A handwritten signature in black ink, appearing to read 'Chad A. Rutkowski', written in a cursive style.

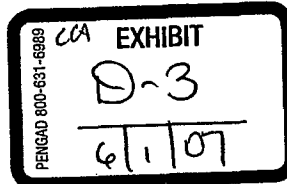
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Chad A. Rutkowski, Esquire

April 20, 2006



## AGREEMENT FOR DIRECTORY ADVERTISING



CLIENT NO. 1147

The Agreement made and entered this 16 day of November 19 95, by and between Advanced Directory Sales Inc. (hereinafter referred to as Seller), and Mohawk Corp. (hereinafter referred to as "Advertiser").

1) Advertiser hereby requests and authorizes Seller to insert Advertiser's advertising in various telephone directories, as specified on National Yellow Pages Advertising orders (hereinafter referred to as "NYPA orders") which, when placed by Seller and accepted by the Publisher, shall become part of this Agreement, and to continue such advertising on all subsequent issues of such directories in accordance with the provisions hereof until such advertising is cancelled; and Advertiser agrees to pay the charges therefore in accordance with the terms of this Agreement.

2) The advertising is to appear at the Yellow Pages heading specified in the NYPA orders or at the Yellow Pages headings in use which are generally descriptive of the commodity or service advertised or in White Pages directories as set forth in the NYPA orders.

3) Advertiser warrants that he/she/it is the owner or the duly authorized representative of the owner of any brand name, trademark, trade name or copyrighted material contained in the NYPA orders. The person signing this agreement represents and guarantees that he/she is authorized to sign it.

4) Advertiser shall be responsible for the protection of its copyright or any copyright it is licensed to use in any writing, pictorial illustration, design, map, photograph or any combination thereof which is included in any advertisement.

5) The charges for the advertising covered by this Agreement shall include the rates set forth in the NYPA orders subject, however, to change thereof by Publishers, provided, however, that such change shall have been published in the Rate & Data book of the Yellow Pages Publishers Association.

The bills for such charges shall include all taxes applicable to the transaction.

All artwork, cuts, engravings, electrotypes or veloxes for new or changed space advertising will be billed to the advertiser. X<sup>ES</sup>

6) All bills for advertising covered by this agreement will be rendered to the Advertiser by the Seller. All bills must be paid to the Seller within thirty (30) days of invoice date. Advertiser agrees to forfeit any discount for said directory or directories if payment is not received by Seller on or before specified date printed on the invoice. Closing dates and publication dates of directories as well as the lengths of the issues are subject to change without prior notice to Advertiser. When a directory issue is extended or shortened subsequent to publication, adjustments to the charges for advertising, if any, shall be in accordance with the directory publisher's policy. Failure to pay the invoice amounts as stated above within 30 days, shall entitle the seller to cancel any and all ads to be run in the future without any liability to the seller.

7) There shall be no liability on the part of the Selling Company, any Telephone Company in whose directory an advertisement appears or the publisher of such directory (hereinafter called "Publishing Company"), their respective agents, employees, successors or assigns, for any error or omission in the publication of or failure to publish any item of advertising in any issue thereof unless such error or omission shall be caused by the negligence or said Selling Company, Telephone Company or Publishing Company in which event such liability shall be limited to the charges for the publication in such issue of the item of advertising involved, excluding charges for cuts, engraving, or electrotypes; provided, however, that no adjustments shall be made in any advertising charges for reason of suspension or termination of Advertiser's telephone service. Seller assumes no liability for any new or changed advertising as a result of verbal instructions by the Advertiser unless the same is confirmed in writing prior to the closing date of the directory involved.

8) Advertising ordered by NYPA orders pursuant to this Agreement may be cancelled in whole or in part by Seller or Advertiser for any or all directories upon written notice to the other party given no less than thirty (30) days prior to the closing date of the particular directory or directories. The seller however, reserves the right to cancel any or all advertising immediately upon written notice to Advertiser in the event that Advertiser shall become delinquent in the payment of bills rendered by Seller. All directories closing prior to this notice shall be billed to Seller and subsequently become the responsibility of the Advertiser.

9) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given when mailed by United States First Class, certified or registered mail, postage prepaid, return receipt requested, by either party.

10) Default on any payment due may, at the seller's option, render the entire balance due including 1.5% per month (18% per year) interest on the outstanding balance and 15% attorney's fees incurred as a result of such default. This can include Distributors, Dealers, Franchisees or Branches when directed by the Advertiser.

11) This Agreement shall inure to and binding upon the successors and assigns of the parties hereto; provided, however, that it shall not be assigned without prior written consent of the seller.

12) Advertiser will be billed on closing and receive a 15% discount if advertising is paid in full by 30 days of invoice date.

I HAVE READ AND ACCEPT THE TERMS AND CONDITIONS SHOWN ABOVE WHICH GOVERN THE PURCHASE OF THE ADVERTISING

X Elizabeth Smith  
Authorized Signature

Date: \_\_\_\_\_ Title: Administrator

Address: 15 East Putman Ave, Suite  
Greenwich, CT 06830

• Original - Office Copy

James J. DiBease, Sr.  
James. J. DiBease, Sr.

Date: 11/16/95 Title: President

Advanced Directory Sales, Inc.  
330 Sicklerville Road • Sicklerville, NJ 08081  
609-629-2304 • Fax 609-629-0686

• Pink - Advertisers Copy

EXHIBIT

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### Advertising Agreement

**This Advertising Agreement**, dated as of the 20th day of June, 2002 (this "Agreement"), is by and between **Yellow Book USA, Inc.** ("Yellow Book"), **Advanced Directory Sales, Inc.** ("ADS") and **C.K. Corporation, dba. American Women's Services** ("Customer").

### Recitals

A. Customer, through its current Certified Marketing Representative ("CMR"), Advanced Directory Sales., has purchased, and continues to purchase, advertising in various of Yellow Book's yellow pages directories (each a "Directory" and collectively, the "Directories"). The term "Directory" shall also include any yellow pages directory subsequently acquired by Yellow Book during the Term (as hereinafter defined).

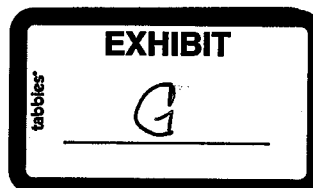
B. Yellow Book desires to offer Customer an incentive, on the terms and conditions hereinafter set forth, to increase the amount of advertising Customer purchases.

### Agreement

1. Yellow Book and Customer agree that the aggregate value of all advertising purchased by Customer as of the date hereof is \$89,760. Customer agrees to purchase additional advertising from Yellow Book during each year of the term of this Agreement (the "Term"). The Term shall be the three-year period beginning as of the date of this Agreement.

2. If Customer purchases advertising in an amount equal to or more than \$310,000 during the first year of the Term, Yellow Book shall provide Customer with a discount off the full advertising rate of display advertising applicable to each Directory (an "Incentive Discount"). The Incentive Discount shall be in the following amounts: (i) a 50% discount during the first year of the Term, (ii) a 25% discount during the second year of the Term, and (iii) full rate during the third year of the Term. No Incentive Discount will apply during the third year of the Term. The Incentive Discounts may not be used in conjunction with any other discount program that Yellow Book may offer. Any in column ads or listings placed will be at full rate. The minimum size display ad will be a DQC (double quarter column).

3. Promptly after the execution and delivery of this Agreement by each of the parties hereto, Customer, or Customer's CMR, must provide Yellow Book with a media plan that sets forth Customer's proposed advertising program in Yellow Book's Directories. The media plan should include the proposed total expenditure, the proposed



ADS-03521

expenditure in each selected Directory and the type of advertisement (e.g., double quarter column, etc.) to be placed in each selected Directory. Yellow Book acknowledges that the aforementioned media plan may be subject to change.

4. If Customer or CMR defaults in the payment of any amounts due Yellow Book in connection with any advertisements purchased by Customer, then, in addition to any other rights Yellow Book may have, Customer shall forfeit its right to receive Incentive Discounts and shall be obligated to pay Yellow Book's established, full-rate charges with respect to any advertisements placed as of the date of default.

5. Any notices and other communications under this Agreement shall be in writing and shall be deemed given on the day of delivery when delivered personally, three (3) business days after mailing when mailed by registered mail, return receipt requested, or one (1) business day after delivery when delivered by nationally-recognized overnight delivery service or, to the extent receipt is confirmed, on the day of delivery when delivered by telecopy. Notices to Yellow Book shall be given to: Yellow Book USA, Inc., 2004 Renaissance Boulevard, King of Prussia, Pennsylvania 19406, attention: Chris Heilbock, Director - National Sales, Telephone: (610) 731-2550, Fax: (610) 731-2659. Notices to Customer shall be given to: [address, contact person, title, phone and fax]. The parties may change their notice address upon written notice to the other party. *1, Alpha Ave. #27, Voorhees, NJ 08043; Steve Brigham, Director, 856-427-6248; 856-427-7905*

6. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard to conflicts of law principles.

7. This Agreement may not be assigned, amended, modified or waived without the prior written consent of all parties, except that each of Customer and Yellow Book shall have the right, without the other parties' consent, to assign its rights and obligations hereunder to any affiliate or to any entity that acquires all, or substantially all, of Yellow Book's or Customer's outstanding shares of stock or assets, provided that any such assignee expressly assumes, in writing, the assignor's obligations hereunder. All of the terms and provisions hereof shall bind and inure to the benefit of the respective successors and permitted assigns of the parties.

8. The failure of any party hereto to enforce at any time any provision hereof shall not be construed to be a waiver of such provision, nor in any way to affect the validity hereof of any part hereof or the right of any party thereafter to enforce each and every such provision.

9. This Agreement contains and is intended as a complete statement of all of the terms of the arrangements between the parties with respect to incentive advertising, and supersedes any previous agreements and understandings between the parties with respect to such matter. This Agreement does not supersede any agreement between Yellow Book and any CMR with respect to Customer's purchase of paid advertising.

10. If any provision of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be of no force and effect, but the illegality, invalidity or unenforceability shall have no effect upon and shall not impair the enforceability of any other provisions of this Agreement.

11. This Agreement may be executed in counterparts, each of which shall be deemed an original, and each party thereto may become a party hereto by executing a counterpart thereof. This Agreement and any counterpart so executed shall constitute one and the same instrument. Additionally, to the extent receipt is confirmed, this Agreement may be executed and delivered by telecopy, with the original to follow by nationally recognized overnight delivery service.

12. **Confidentiality:** The parties agree not to disclose the specific terms of this Agreement to any other party, apart from their respective legal and financial advisors, without the written consent of the parties hereto, except as required by law or as required or requested by any exchange on which their securities or debt instruments (or the securities or debt instruments of any of their affiliates or parent organizations) are or will be traded.

ADS-03523



**In Witness Whereof**, the undersigned have executed this Agreement as of the date first above written.

**Yellow Book USA, Inc.**

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**C.K. Corporation, dba. American Women's Services**

By: 

Name: \_\_\_\_\_

Title: *Director*

**Advanced Directory Sales, Inc.**

By: 

Name: \_\_\_\_\_

Title: *Pres.*

**[ See Attached Directory Schedule ]**

ADS-03524

13. If the Customer, C.K. Company, does not fulfill the entire 3-year commitment as stated in this agreement, the CMR, Advanced Directory Sales, will not be liable for any penalties or legal action by Yellow Book USA regarding the early termination.

**Yellow Book USA, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Advanced Directory Sales, Inc.**

By: \_\_\_\_\_

Name: James J. DiBacco SR

Title: President

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY

ADVANCED DIRECTORY SALES: CIVIL ACTION

Plaintiff(s) :

vs. :

ALLENTOWN MEDICAL :  
SERVICES; AMERICAN :  
WOMEN'S SERVICES; :  
ASSOCIATES IN OBSTETRICS: :  
GYNECOLOGY; CK COMPANY; :  
PROFESSIONAL MEDICAL :  
SERVICES, P.C., and :  
STEVEN BRIGHAM, M.D., :  
individually and as :  
representative of :  
ALLENTOWN MEDICAL :  
SERVICES; AMERICAN :  
WOMEN'S SERVICES; :  
ASSOCIATES IN :  
OBSTETRICS/GYNECOLOGY; :  
CK COMPANY; :  
PROFESSIONAL MEDICAL :  
SERVICES, P.C., and :  
ABC COMPANY 1-100, :  
Defendant(s) : NO. 06-CV-810

Oral Deposition of STEVEN

BRIGHAM, M.D., taken pursuant to notice, held  
at the offices of Gallagher, Schoenfeld,  
Surkin & Chupein, 25 West Second Street,  
Media, Pennsylvania, on Thursday, May 17,  
2007, commencing at 10:05 a.m., before  
Kathleen M. Curran, Registered Professional  
Reporter-Notary Public present.

EXHIBIT

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1 going on. You asked me why was I continuing.  
 2 I mean this is the time I was having all these  
 3 licensing hearings and legal problems, and I  
 4 -- we brought in accountants and bookkeepers  
 5 and they couldn't decipher it.

6 Plus there was always -- Jim  
 7 sort of had us over a barrel a little bit  
 8 because we would pay him up front for a phone  
 9 book that wasn't going to come out for four or  
 10 five months. And if we ever quit with Jim,  
 11 there was the -- you know, there was the  
 12 implied threat that he could just keep the  
 13 money, cancel the books. We wouldn't be in  
 14 books, he'd have all the money. So we were  
 15 sort of over a barrel with Jim.

16 Q Did there come a point in time where you  
 17 fell behind on your payments to Mr. DiBease,  
 18 to ADS?

19 A What do you mean fell -- we got no  
 20 bills.

21 Q Did there come a point in time where Mr.  
 22 DiBease would tell you that you owed a  
 23 substantial balance to ADS for advertising?

24 A There were times when Mr. DiBease would  
 25 say we owed him money. But, you know, we

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1 money, what did you say?

2 A Well I never knew -- when, at what point  
 3 in time?

4 Q At what point in time did he start  
 5 telling you that you were behind, that you  
 6 owed him more money?

7 A I don't remember exactly. There was a  
 8 point in time where he was alleging that we  
 9 owed him money.

10 Q How did you respond?

11 A Well, this was before -- this event,  
 12 this point in time that you're talking about  
 13 is before this phone book where we -- as I  
 14 said, we knew that we had been overcharged. So  
 15 Jim -- the problem was that Jim -- that we had  
 16 no accounting. Jim would say we owed him  
 17 money. So I would say, all right, we'll see  
 18 what we can do. We'll see if we can send you  
 19 some money. I mean the whole thing was based  
 20 on trust. I didn't realize the magnitude by  
 21 which we were being cheated.

22 Q Did you promise to pay him all the money  
 23 that you owed him no matter what, even if you  
 24 went back to the local?

25 A I don't remember saying that, but if we

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1 paid him over three million dollars and didn't  
 2 get no accounting where the money went. So  
 3 it's hard to know that we owed him anything.

4 Q How did you determine that you paid him  
 5 three million dollars? I saw a list of checks  
 6 which totaled, and I have the documents here,  
 7 roughly one point eight million. So where do  
 8 you get this three million dollar figure from?

9 A Those are just the checks from -- those  
 10 don't include Michele's checks.

11 Q Well that's just the checks for CK as  
 12 oppose to -- for Virginia Women's; is that  
 13 correct?

14 A I didn't say anything about CK.

15 Q But those are the checks that don't  
 16 include Virginia Women's Center, is that your  
 17 explanation?

18 A Those checks are only half of the amount  
 19 of money that we paid Jim. Whether it was  
 20 three a half or three point six, I think  
 21 there's more that we just can't even find. I  
 22 mean it's only going back for a period of --  
 23 probably more four or five million that we  
 24 paid him over the years.

25 Q When Jim told you that you owed him

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1 -- my intention is to pay money that we owe.

2 The problem is he owes us money.

3 Q How much?

4 A The bookkeepers and accountants couldn't  
 5 -- no one will ever be able to pierce the fog  
 6 of all of this.

7 Q How much are you claiming that he owes  
 8 you in your Counterclaim?

9 A I don't even know. Half of what we  
 10 paid him.

11 Q How do you come up with that?

12 A Because he said -- actually, if you  
 13 really want to push it, since he promised that  
 14 we were going to get to pay half of what the  
 15 local reps were and instead he was charging  
 16 him double what the local reps were, we  
 17 probably paid him four times what we should  
 18 have. And if we paid him four million  
 19 dollars over the years, I don't know. He may  
 20 owe us as much as three million dollars.

21 Q And what documents do you have to  
 22 support that?

23 A I have almost no documents.

24 Q How are you going to prove that?

25 A You pushed this lawsuit. You know, I

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1 liked Jim. We got cheated, but how are we  
 2 going to prove it. I don't know how we're  
 3 going to prove it.  
 4 Q You had a lawsuit involving a lease in  
 5 King of Prussia?  
 6 A With the landlord?  
 7 Q Yes.  
 8 A Yes.  
 9 Q You thought you were going to get a  
 10 bunch of money; but, only ended up with thirty  
 11 thousand or so; is that accurate?  
 12 MS. FIORENTINO: I object to  
 13 form and as to relevance.  
 14 MR. KASSAK: It becomes  
 15 directly relevant if it's true.  
 16 ---  
 17 BY MR. KASSAK:  
 18 Q This is just foundation. Is it correct  
 19 that you thought you were going to get a lot  
 20 of money in that lawsuit; but, it didn't work  
 21 out that way?  
 22 MS. FIORENTINO: Again I  
 23 object to form.  
 24 THE WITNESS: I don't know if  
 25 we thought we were going to get a lot of

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1 money; but, we definitely had a lawsuit with  
 2 the landlord and it didn't -- it's true, it  
 3 didn't work out the way we wanted.  
 4 ---  
 5 BY MR. KASSAK:  
 6 Q You told Jim that when you got paid in  
 7 that lawsuit, you were going to pay him every  
 8 dime that you owed him; isn't that true?  
 9 A All along my intentions with Jim have  
 10 been honorable and to pay him -- if we ever  
 11 owed him any money, we would pay him any money  
 12 that we owed him. The problem is we don't owe  
 13 him any money.  
 14 Q When you made that statement to him,  
 15 what was your intention?  
 16 A I don't remember making that precise  
 17 statement; but, I'm not necessarily denying  
 18 that -- I mean there was a point in time where  
 19 Jim was alleging we owed him money and, you  
 20 know, if we had owed him money, I would have  
 21 wanted to pay it to him.  
 22 Q When was the King of Prussia lawsuit?  
 23 A In the early -- you know, lawsuits span  
 24 over a period of time. I want to say 2002,  
 25 2003, something like that, 2001. I'm not

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1 sure exactly.  
 2 Q Did you ever tell Mr. DiBease that in  
 3 addition to the amount that ADS claims that  
 4 you owed that he should also add the interest  
 5 costing him on his corporate line of credit  
 6 for the money he had to borrow as a result of  
 7 not being paid by you?  
 8 A I don't remember that precise statement  
 9 right off the top of my head; but, I would  
 10 think that if Mr. DiBease was owed any money,  
 11 just as I think we should be paid interest on  
 12 any money owed by Mr. DiBease, if Mr. DiBease  
 13 is owed any money, it would be only fair to  
 14 pay him interest.  
 15 Q Did you tell him that he should add the  
 16 interest?  
 17 A I don't remember that off the top of my  
 18 head; but, you're going back five or six  
 19 years. I don't know when exactly you're  
 20 alleging that I said this.  
 21 Q Let's mark this as P-3.  
 22 (Whereupon the court reporter  
 23 marked Exhibit Number P-3 for purposes of  
 24 identification.)  
 25 ---

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1 BY MR. KASSAK:  
 2 Q The document that I marked as P-3 for  
 3 identification is a document produced by your  
 4 counsel in this litigation. They appear to be  
 5 handwritten notes. Can you tell me what they  
 6 are?  
 7 A They look like notes. It looks like  
 8 handwritten notes, exactly what you said.  
 9 Q You can do better than that.  
 10 A I can tell you it's not my handwriting.  
 11 Q Okay, that's a start. Do you recognize  
 12 the handwriting?  
 13 A Not offhand, no.  
 14 Q Do you know how they came to be in your  
 15 file?  
 16 A No.  
 17 Q In terms -- can you tell based on the  
 18 locations described, does that provide you any  
 19 clue as to the context of what these are?  
 20 A Well it looks like there's a list of  
 21 locations and there's number to the right.  
 22 There's two columns of numbers and I'm seeing  
 23 -- do you want me to describe what I'm seeing  
 24 or what are you asking?  
 25 Q No. What I'm asking you is based on the

**WHITE AND WILLIAMS LLP**

BY: Michael O. Kassak, Esquire (MK-9317)  
LibertyView, Suite 400  
457 Haddonfield Road  
Cherry Hill, NJ 08002-2220  
856.317.3600  
kassakm@whiteandwilliams.com  
Attorneys for plaintiff Advanced Directory Sales

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ADVANCED DIRECTORY SALES	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	NO.: 06-CV-810
v.	:	
	:	
ALLENTOWN MEDICAL SERVICES;	:	
AMERICAN WOMEN'S SERVICES;	:	
ASSOCIATES IN	:	
OBSTETRICS/GYNECOLOGY; CK	:	
COMPANY; PROFESSIONAL MEDICAL	:	
SERVICES, P.C.; and STEVEN BRIGHAM,	:	
M.D., individually and as a representative of	:	
ALLENTOWN MEDICAL SERVICES;	:	
AMERICAN WOMEN'S SERVICES;	:	
ASSOCIATES IN	:	
OBSTETRICS/GYNECOLOGY; CK	:	
COMPANY; PROFESSIONAL MEDICAL	:	
SERVICES, P.C., and	:	
ABC COMPANY 1-100	:	
	:	
Defendants.	:	

ORDER

**THIS MATTER** having come before this Court on motion of plaintiff Advanced Directory Sales, through its attorneys White and Williams LLP, and the Court having considered the pleadings filed, argument of counsel, if any, and for good cause shown, it is on this \_\_\_\_\_ day of \_\_\_\_\_, 2007,

**ORDERED** that plaintiff Advanced Directory Sales' motion to for summary judgment is hereby **GRANTED**; and it is

**FURTHER ORDERED** that defendants' amended counterclaim against plaintiff Advanced Directory Sales is hereby dismissed **with prejudice**; and it is

**FURTHER ORDERED** that a copy of this order shall be served within seven (7) days of receipt.

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U.S.D.J.