NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

METRO PUBLIC ADJUSTMENT, INC. Appellee v. MATTHEW T. PARKER, EUGENE HOUCK, CHRISTINE HOUCK AND VENTURE PUBLIC ADJUSTING, LLC Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2134 EDA 2013

Appeal from the Order Entered July 2, 2013
In the Court of Common Pleas of Bucks County
Civil Division at No(s): 2013-04728-26

BEFORE: BENDER, P.J.E., PANELLA, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J. **FILED MARCH 18, 2014**

Matthew T. Parker, Eugene Houck, Christine Houck and Venture Public Adjusting, LLC (collectively Appellants), appeal from the trial court's order granting a preliminary injunction[1] in favor of Appellee, Metro Public

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[1] The essential prerequisites for granting injunctive relief are:

> (1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
>
> (2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings;

(Footnote Continued Next Page)

Adjustment, Inc. (Metro) which prohibits Venture from: (1) having any business relationship with Parker or the Houcks; (2) contacting Metro's former clients or present customers; and (3) servicing any client previously associated with Metro. After careful review, we affirm on the well-reasoned opinion authored by the Honorable Alan M. Rubenstein.

Metro is a network marketing company that focuses on recruiting individuals to become licensed to solicit and perform public adjustment services for insurance claims of property casualty losses. Metro operates in 48 states and has 25 offices, 13 of which are located in Pennsylvania.[2] The remaining 12 offices are in New Jersey, Maryland, Illinois, and Atlanta, Georgia. Metro's main office is located in Bensalem, Pennsylvania.

(Footnote Continued) ———————————

> (3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
>
> (4) that the activity it seeks to restrain is actionable, its right to relief is clear and the wrong is manifest, or, in other words, that it is likely to prevail on the merits;
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> (5) that the injunction it seeks is reasonably suited to abate the offending activity; and
>
> (6) that a preliminary injunction will not adversely affect the public interest.

Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount Inc., 828 A.2d 995, 1002 (Pa. 2003).

[2] Approximately 35%-40% of Metro's business and revenue is generated from claims in Pennsylvania.

Appellants are all former independent contractors hired by Metro. Each Appellant signed an Independent Contractor Agreement (ICA) to become part of the Metro network; all claims representatives and adjustors were required to sign an ICA upon commencement of their business relationship with Metro. The ICA contained a restrictive covenant, stating, in pertinent part:

> Restrictive Covenant, Non-Disclosure of Confidential Information and Non-Solicitation
>
> [During the term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement] Contractor shall not compete with Metro or Metro Subsidiaries in any state of the United States where Contractor or Metro or Metro subsidiaries are licensed during the Restriction Period and shall not work (whether as an independent contractor, employee, or otherwise) for any person who was formerly associated with Metro or Metro Subsidiaries, whether as an independent contractor, employee or otherwise.

Metro Independent Contractor Agreement, 3/13/2009, at ¶14(b).

After being hired by Metro in 2008, Eugene Houck participated in an extensive sales training course provided by Metro, obtained Metro's sales materials, had access to Metro's password-protected Intranet (which includes Metro's compensation plan and other confidential documents), and, most notably, had the highest level of access to Metro's proprietary information. Mr. Houck ultimately rose to the level of Executive Vice-President with Metro, a position only held by five or six individuals in a company of over 1,300 licensed claims representatives and 47 adjustors. Mr. Houck was so familiar with Metro's training program that he was an

instructor for Metro's Quick Start Program, which trains new claims representatives to help them understand the industry as a whole and how Metro operates its business.

Christine Houck began working at Metro in 2009 as a training claims representative; she, too, signed an ICA. Mrs. Houck assisted her husband, Eugene Houck, in marketing and recruiting to build his team. Because of the Houcks' business success, Metro provided them with a significant amount of support, including advertising and business-related travel.

Parker joined Metro as a Training Claims Representative in March 2009. He, too, signed an ICA. Parker received training, similar to the Houcks, and had access to the same company documents. Parker eventually became a licensed public adjustor for Metro.

In June 2013, Metro discovered that Appellants had formed their own public adjusting company, Venture Public Adjusting, LLC; Venture had been incorporated in March 2013, Appellants had created a Facebook page for the company in April 2013, and Appellants had uploaded a promotional video for the business on YouTube, all while still employed by Metro. Through Venture, Appellants sought adjusters in Metro's same work territory, advertised in its same areas of business, and used the training experience gained at Metro to train new clients.

On June 21, 2013, Metro filed a complaint against Appellants seeking a preliminary injunction enforcing the ICA's covenant not to compete; Appellants filed an answer to the petition on June 27, 2013, arguing that

Metro could not prove that it was harmed by its formation of Venture or that the terms of the ICA's restrictive covenant were reasonably necessary for Metro's protection. The court held a hearing on Metro's petition, and, on July, 8, 2013, granted Metro an injunction that, effective immediately and until further order of court, prohibited Appellants from working as public adjusters in Pennsylvania, New Jersey, Maryland, Illinois and Colorado and ordered Venture to have no affiliation with the remaining Appellants (the Houcks and Parker). Appellant sought reconsideration from the trial court, which was denied. This timely appeal followed.

On appeal, Appellants present the following issues for our consideration:

> (1) Whether the Court of Common Pleas abused its discretion and/or committed an error of law in finding that Metro had a clear right to relief in enforcing the unreasonable restrictive covenant against independent contractors who never had an employment relationship with Metro.
>
> (2) Whether the Court of Common Pleas committed an abuse of discretion or error of law in finding that the harm in denying the injunction outweighed the devastating harm to the contactors where Metro was not protecting any legitimate business interest.
>
> (3) Whether the Court of Common Pleas committed an abuse of discretion or error of law in finding that Metro had suffered irreparable harm when no legitimate business interest was compromised and Metro has an adequate remedy at law.
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> (4) Whether the court should use its equitable powers to reform the injunction in the event that it does not reverse the Court of Common Pleas.

Appellate review of a trial court order granting or denying preliminary injunctive relief is highly deferential. ***Warehime v. Warehime***, 860 A.2d 41, 46 (Pa. 2004). As such, an appellate court "will not inquire into the merits of the controversy, but instead will examine the record only to determine if there were any apparently reasonable grounds for the action of the court below." ***Lutz Appellate Printers, Inc. v. Department of Property and Supplies***, 370 A.2d 1210, 1212-13 (Pa. 1977). Only if it is plain that no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will an appellate court interfere with the decision of the trial court. ***Blair Design & Constr. Co. v. Kalimon***, 530 A.2d 1357, 1359 (Pa. Super. 1987).

"[I]n order to be enforceable a restrictive covenant must satisfy three requirements: (1) the covenant must relate to either a contract for the sale of goodwill or other subject property or to a contract for employment; (2) the covenant must be supported by adequate consideration; and (3) the application of the covenant must be reasonably limited in both time and territory." ***Piercing Pagoda, Inc. v. Hoffner***, 351 A.2d 207, 210 (Pa. 1976).

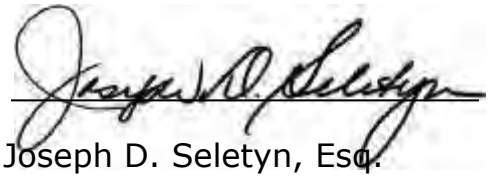
Instantly, the trial court made extensive findings of fact and conclusions of law after the injunction hearing, ultimately determining that: (1) Appellants received Metro's basic and advanced training in the public adjusting industry, having had no prior public adjusting experience or training; (2) the specialized training Appellants received at Metro guided

them in developing their own business and obtaining clients under the "Metro" name which they marketed and advertised under a commission-based compensation schedule; (3) Metro's restrictive covenant is sufficiently related to a "contract for employment" because it serves to prevent independent contractors from using all the training and experience provided to them by Metro for their own pecuniary benefit and prevents Metro contractors from conducting their own business in direct competition with Metro based upon Metro's business model (recruitment of trainees); (4) Metro's restrictive covenant is tailored to protect Metro's legitimate, protectable business interests where Metro invested greatly in Appellant's specialized training in the public adjusting business, as well as made them privy to Metro's particular business model and practices – all of which made Appellants successful in the industry and gave them access to Metro's proprietary information that taught them the best way to maximize profits on a claim; (5) Metro's restrictive covenant is a legitimate, protectable business interest and necessary for the viability and continued profitability of Metro; and (6) the geographic scope and term of the covenant is reasonable where Appellants are not restricted from operating business in 45 of 50 states, scope of covenant is narrowly tailored to only prevent Appellants from directly competing in states where Metro does business, and two years is generally considered reasonable temporal limitation. Trial Court Opinion, 8/15/2013, at 17-20.

Having reviewed the parties' briefs, relevant case law and the record on appeal, with a particular focus on the evidence from the injunction hearing, we conclude that the trial court had reasonable grounds for granting Metro's petition for a preliminary injunction. ***Lutz Appellate Printers***, ***supra***. Accordingly, we will not interfere with that decision. Moreover, we find that the comprehensive opinion authored by Judge Rubenstein sufficiently addresses and disposes of Appellants' issues on appeal. We rely upon Judge Rubenstein's decision and direct the parties to attach a copy of his opinion in the event of further proceedings in the matter.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/18/2014

IN THE COURT OF COMMON PLEAS
BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

METRO PUBLIC ADJUSTMENT, INC. Plaintiff v. MATTHEW T. PARKER, EUGENE HOUCK, CHRISTINE HOUCK, and VENTURE PUBLIC ADJUSTING, LLC Defendants	No. 2013-04728 2134 EDA 2013 **PRELIMINARY INJUNCTION**

OPINION

Defendants, Matthew T. Parker, Eugene Houck, Christine Houck, and Venture Public Adjusting, LLC, appeal from this Court's Order of July 2, 2013, granting Plaintiff Metro Public Adjustment, Inc.'s Petition for a Preliminary Injunction.

On June 21, 2013, Plaintiff, Metro Public Adjustment, Inc. ("Metro"), filed a Complaint and Petition for Preliminary Injunction, seeking to enjoin Defendants, Matthew T. Parker, Eugene Houck, Christine Houck, and Venture Public Adjusting, LLC ("Defendants") from: (1) "[c]ompeting with Metro in Pennsylvania, New Jersey, Maryland, Illinois and Colorado; (2) "[c]ontinuing or maintaining employment . . . in the public adjustment industry" in the aforementioned states; and/or (3) "contacting or soliciting business from and/or servicing any Metro clients." Plaintiff's Petition for Preliminary Injunction, June 21, 2013.

This Court held a hearing on Plaintiff's Petition for Preliminary Injunction on July 2, 2013.

The following findings of fact were established at the hearing:

William Underkoffler, the Director of Adjusting for Metro Public Adjustment, Inc. for the past seven (7) years, testified that Metro is a public adjusting firm with its main office in Bensalem, Bucks County. Metro also has 25 offices located throughout Pennsylvania, New Jersey, Illinois, Maryland, and Georgia. Metro conducts business in 48 states, but generates most of its revenue in Pennsylvania and New Jersey. N.T. July 2, 2013, pp. 4-6, 31-32, 86-87, 99.

"Public adjusting" consists of "aid[ing] and assist[ing] consumers in presenting and negotiating insurance claims on their behalf." N.T. July 2, 2013, pp. 3-4. Metro obtains clients by recruiting and training prospective public adjusters and claims representatives. Underkoffler testified that the training provided by Metro is "extensive" and includes "weekly conference calls" as well as on-site training at one of Metro's regional offices. N.T. July 2, 2013, p. 4.

Metro's business model is primarily based upon "network marketing." The most important aspect of the business is the recruitment of new employees or independent contractors as "claims representatives" or "adjusters." Underkoffler explained that a "claims representative" is the "salesman" who solicits the business and procures the contracts with various insurance companies. After executing these contracts, an "adjuster" then meets with the insurance company, prepares the estimates of damages and negotiates the settlements on behalf of the insured. Despite these distinct positions, Underkoffler testified that all new recruits start as a "training claims representative" and progress according to their specific skills and attributes. Metro rarely hires experienced, licensed claims representatives. N.T. July 2, 2013, pp. 7-10, 12.

Underkoffler testified that Defendant, Eugene Houck, became affiliated with Metro on November 20, 2008. Eugene Houck signed an "Independent Contractor Agreement" ("ICA") upon working for Metro. Underkoffler testified that Eugene Houck signed the same ICA that all new claims representatives sign. Once the ICA is signed and executed, Metro provides new "trainees" with access to Metro's sales materials and the training process begins. Underkoffler testified that Eugene Houck was given extensive training with Metro, including the completion of an advanced sales training course. N.T. July 2, 2013, p. 14, 16; see also Plaintiff's Exhibit-1.

According to Underkoffler, independent contractors are paid on a commission-based compensation schedule by receiving a percentage of each negotiated settlement amount. N.T. July 2, 2013, pp. 10, 85-90.

As of June, 2013, Eugene Houck's title with Metro was "Executive Vice-President." Previous to his current post, Eugene Houck was a "claims representative." Underkoffler testified that there are between five (5) and six (6) Executive Vice-Presidents in the company. Underkoffler further testified that as an Executive Vice-President, Eugene Houck had the "highest level of access" to Metro's proprietary information, which included copies of all estimates, insurance strategies for coverage opinions and negotiations, as well as a list of over 1,000 clients. N.T. July 2, 2013, pp. 17-18.

When a claims representative or adjuster is no longer affiliated with Metro, they are required to return all documents belonging to Metro, and all access to Metro's client information ceases. According to Underkoffler, none of the Defendants returned any of these documents. N.T. July 2, 2013, pp. 19-20.

Underkoffler testified that Eugene Houck made approximately $120,000.00 annually. Prior to being affiliated with Metro, Houck was a "stay-at-home dad" with no prior public adjusting experience. N.T. July 2, 2013, p. 21.

Underkoffler testified that Christine Houck, Eugene Houck's wife, became affiliated with Metro on March 18, 2009, when she signed the same Independent Contractor Agreement. See Plaintiff's Exhibit-2. Christine Houck received training substantially similar to Eugene Houck and "[e]verything that was accessible to Mr. Houck would have been accessible to Mrs. Houck." N.T. July 2, 2013, p. 22.

Christine Houck was "extremely involved in developing and building the business." Although the Houcks were independent contractors, Underkoffler testified that Metro financially

supported many of their marketing systems because of their success in expanding Metro's business. N.T. July 2, 2013, pp. 23-24.

Matthew Parker became affiliated with Metro on March 17, 2009 after signing the Independent Contractor Agreement. See Plaintiff's Exhibit-3. Parker received substantially the same training as the Houcks and had equal access to the proprietary information and documents of Metro. Parker later became a licensed public adjuster with Metro. N.T. July 2, 2013, pp. 23-24.

Underkoffler testified that Metro only has 47 public adjusters compared to 1,300 claims representatives. The public adjuster training is "far more detailed" and "the access to documents is paramount" to their success. As an adjuster, Parker had access to all of Metro's documents, including their past strategies used in successful negotiations and copies of the "winning" letters used in the past that were successful in obtaining business. According to Underkoffler, Eugene and Christine Houck were very "fond" of Parker and requested that he service many of their claims. N.T. July 2, 2013, pp. 26-27, 29.

The Independent Contractor Agreements signed by all three (3) Defendants contain a "Restrictive Covenant, Non-Disclosure of Confidential Information, and a Non-Solicitation provision." In the covenants, the Defendants were restricted from soliciting Metro's clients and using Metro's business practices, models, and confidential information for a period of two (2) years. The covenant not to compete, contained within all three (3) independent contractor agreements at issue in this case, is as follows:

> During the term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement . . . Contractor shall not compete with Metro or Metro Subsidiaries in any state of the United States where Contractor or Metro or Metro subsidiaries are licensed during the Restriction Period and shall not work (whether as an independent contractor, employee, or otherwise) for any person who was formerly associated with Metro or Metro Subsidiaries, whether as an independent contractor, employee or otherwise.

Independent Contractor Agreement.

In the Petition for a Preliminary Injunction, Metro was seeking to prohibit defendants from engaging in public adjusting in Pennsylvania, New Jersey, Colorado, Illinois, and Maryland, the states where Metro generates the majority of its business. Eugene Houck is licensed in all five of these states and Parker is licensed in Pennsylvania. N.T. July 2, 2013, pp. 30-33.

All three defendants were terminated in June, 2013 after Metro discovered that they had created a new public adjusting company called "Venture Public Adjusting, LLC." This company was incorporated on March 5, 2013, while all three Defendants were still affiliated with Metro. Three months prior to their departure from Metro, all three (3) Defendants established a website for their new company on February 26, 2013. The registered office address for the corporation was Matthew Parker's residence in Parkersburg, Pennsylvania. N.T. July 2, 2013, pp. 34-35; see also Plaintiff's Exhibit-4 & 7.

After the date of incorporation, Underkoffler testified that Matthew Parker contacted him seeking further claims to adjust. Further, on June 11, 2013, Venture Public Adjusting, LLC obtained its public adjusting license in Pennsylvania.

The website for the new company was fully operational at that time with its domain address located at the personal residence of Eugene and Christine Houck. Venture Public Adjusting also created a Facebook page for their new company on April 22, 2013.

Again, all three (3) Defendants were still performing claims and dealing with customers of Metro at the time that these events occurred. N.T. July 2, 2013, pp. 35-36; see also Plaintiff's Exhibit-13.

The Defendants' website, www.venturepublicadjusting.com, indicates that their new company handles residential and commercial claims and various public adjusting services --- the same services provided by Metro. See Plaintiff's Exhibit-5. On Christine Houck's "LinkedIn" page, a professional social media website, she lists her occupation as "Business Development

Officer" at Venture Public Adjusting, LLC --- the same type of work she conducted for Metro. N.T. July 2, 2013, p. 48; see also Plaintiff's Exhibit-9.

Underkoffler testified that Venture Public Adjusting, LLC had also begun advertising for their own public adjuster trainees prior to their departure from Metro. The location of the trainee hiring was in Pennsylvania, New Jersey, and Maryland. Underkoffler further testified that Metro generates the majority of their business from these three (3) states. There was also a specific advertisement promoting Venture Public Adjusting, LLC's mentorship program located in Allentown, where Metro also has an office. According to Underkoffler, these advertisements were posted on the internet prior to the defendants' termination from Metro. N.T. July 2, 2013, pp. 49-51; see also Plaintiff's Exhibit-10.

Regarding the various advertisements, Underkoffler testified that the Defendants utilized Metro's "network recruiting" business model and the same recruiting methods for which Metro generates its business. Numerous other exhibits were admitted into evidence displaying advertisements by Venture Public Adjusting, LLC located in various media for trainees in and around the Philadelphia metropolitan area. See Plaintiff's Exhibits 9-12.

The Defendants also uploaded a video to YouTube, a video-sharing website, which was introduced into evidence. This video was uploaded on April 15, 2013, shortly after Venture Public Adjusting, LLC was incorporated and prior to the termination of Defendants' affiliation with Metro. The YouTube video was seven (7) minutes in length and promotional in nature, including information regarding Venture Public Adjusters, LLC, its website, address, telephone number, and advertisements. The video also included an explanation of the public adjusting business narrated by Eugene Houck. N.T. July 2, 2013, pp. 64-71; see also Plaintiff's Exhibit-15.

In May of 2013, after the creation of Venture Public Adjusting, LLC but prior to the defendants' termination, Matthew Parker attended a marketing and sales convention conducted by Metro in Atlantic City, New Jersey. Parker attended the entire convention and received additional training and continuing education credits towards his public adjusting licenses at that convention. N.T. July 2, 2013, pp. 73-74.

On June 19, 2013, when Metro learned of the creation of Venture Public Adjusting, LLC, Eugene Houck, Christine Houck, and Matthew Parker, were terminated from their affiliation with Metro. Prior to June 17, 2013, the Defendants continued to process claims for Metro while creating and establishing their own new business. N.T. July 2, 2013, pp. 59-60; see also Plaintiff's Exhibit-16.

Underkoffler testified that Metro was unaware of the incorporation of Venture Public Adjusting, LLC and the various advertising and marketing of this new company. Around the second week of June, 2013, Metro discovered the YouTube video made by Defendants. Upon learning the entire scope of defendants' actions, Metro sent all three defendants termination letters. See Plaintiff's Exhibit-16.

Underkoffler testified that it took Metro 20 years to build its business and training model. N.T. July 2, 2013, pp. 27, 78.

Eugene Houck testified that prior to his affiliation with Metro, he was a stay-at-home father and the owner of a bakery. He also worked for Caterpillar in their heavy equipment department and was employed as a roofer for a period of time. N.T. July 2, 2013, pp. 102-03.

Prior to signing the Independent Contractor Agreement with Metro, Eugene Houck testified that he was aware of the non-compete provision located within the ICA, however, he did not read it because he "was told there's no reason to read the non-compete because you will be able to make a living as a public adjuster if you decide to leave Metro [but] you cannot . . . solicit [Metro's] customers or [their] employees." N.T. July 2, 2013, p. 104.

Eugene Houck testified that he was paid entirely by commissions based upon the claims that he wrote and settled for Metro. He further testified that he "repeatedly" voiced concerns to Metro's Chief Financial Officer regarding the calculation of his commission. N.T. July 2, 2013, pp. 106-07.

Eugene Houck testified that he and his wife, Christine Houck, developed their own system and methods of advertising separate and apart from Metro's business model because he wanted to "disassociate" himself from Metro. He further testified that he did not believe it was important to advise Metro of his new company because "it had nothing to do with Metro" and was "completely different." N.T. July 2, 2013, pp. 118-119.

Eugene Houck also testified that since leaving Metro, he has not solicited any of their customers or employers or taken any documents belonging to Metro. Eugene Houck stated that the initial conversations regarding the creation of a new public adjusting company did not include Matthew Parker, but admitted that Parker was eventually solicited as a partner in Venture Public Adjusting, LLC.

The new company, Venture Public Adjusting, LLc, is jointly owned by Defendants, Eugene Houck, Christine Houck, and Matthew Parker. N.T. July 2, 2013, pp. 123-26.

Eugene Houck stated that Venture Public Adjusting, LLC will operate in Pennsylvania, New Jersey, and Maryland, and that if he was prohibited from operating as a public adjuster for two years, he would suffer financially. N.T. July 2, 2013, pp. 113-14, 119.

Matthew Parker testified that prior to his affiliation with Metro, he was a chimney contractor for approximately eight (8) years. Parker was an adjuster for Metro and was compensated at a 20% commission fee. He testified that "everybody" at Metro wanted to be on Eugene and Christine Houck's team because of their success. N.T. July 2, 2013, pp. 135-39.

Parker testified that even after the creation of Venture Public Adjusting, LLC, he was still operating with Metro and dealing with their claims because he was "afraid of getting cut-off and losing [his] money." N.T. July 2, 2013, p. 141.

Parker stated that he has not solicited any of Metro's clients, employees, or independent contractors since joining Venture Public Adjusting, LLC. When asked how Venture Public Adjusting, LLC differs from Metro, Parker testified that Venture's business model consists of

"maximizing" claims whereas Metro's business is driven by the "volume" of claims being processed. N.T. July 2, 2013, pp. 141-42.

Parker testified that if he was not allowed to continue working as public adjuster, he would also suffer financial harm. N.T. July 2, 2013, pp. 143.

On cross-examination, Parker admitted that he did not read the Independent Contractor Agreement before signing it, although he had time to do so. He further testified that as an adjuster for Metro, he had access to all of their documents and client lists. Parker also provided his personal cell phone number to Metro's clients during his employment with Metro. N.T. July 2, 2013, pp. 145-46.

Regarding the creation of Venture Public Adjusting, LLC, Parker testified that he was interviewed by Eugene and Christine Houck. After the interview, Parker decided to go into business with the Houcks. Even after the creation of Venture Public Adjusting, LLC, Parker continued to "finish out" his claims with Metro. N.T. July 2, 2013, pp. 148-50.

Christine Houck testified that, after her affiliation with Metro was terminated, she did not solicit any of Metro's clients, employees, or independent contractors. N.T. July 2, 2013, p. 163.

After testimony concluded, this Court granted Metro's Petition for Preliminary Injunction, stating the following:

> We notice that Eugene Houck signed [the Independent Contractor Agreement] on December 3rd, 2008; that Christine Houck signed hers on March 18th, 2009, and Matt Parker signed his on 3/17/09. So you were brought into a business of your own volition. You were asked by [Plaintiff's counsel] if you read the Covenant Not to Compete clause. I never understood why counsel asked that question because invariably the answer is "no." I think a better question might be: Did you have an opportunity to read it, or did anybody prevent you from reading it? The answer to that clearly is "yes" and "yes." They may not have read it, but they certainly had an opportunity, [but] they had to understand, as well, what they were becoming involved with, and that is a large concern that's in the business of public adjusting.

These people had no training whatsoever in that endeavor. Whatever training they received, whether it was deficient or insufficient, was provided solely by Metro. Now, in exchange for this, Metro, obviously, is going to receive a profit. They receive a percentage of the claims and they pay people, such as these defendants, a percentage of that percentage, but it was through Metro that the training and the acquaintance with the business occurred, and we look at Mr. Houck. The testimony was that he earned $120,000 in the last calendar year. His wife confirmed a figure near that amount, $114,000, and she was also trained by Metro. Now, that is by no means a starvation wage under anybody's rule book, not at all, and I don't find the testimony of the defense credible on that score. . . .

. . . Now, Metro has a right to expect that its employees will not compete with them. They can't make a blanket non-compete clause become valid. It has to be reasonable, and what they have said is in the areas in which they have business, and in certain states where they are licensed to conduct that business, most specifically Pennsylvania, [and] New Jersey, that is eminently reasonable. If you listen to the defendants here they would have you think that they were working in a sweatshop. Not at all. Nobody gets their hands dirty. You have a chance to make a lot of money. You have that opportunity because of Metro and no one else. . . .

. . . Now what happens? Surreptitiously, without any notice to Metro, the parties together decide that they're going to form a new company, Venture Public Adjusting, LLC. Well before they leave Metro in March of 2013 they incorporate this, and where do they incorporate it from? Matt Parker's home. At that time, all three of these defendants are working for Metro, and, again, it's without notice to their company.

At the time when they sought to establish Venture, they were still processing claims for Metro. They were still under contract with Metro. They still had clear access to most, if not all, of the proprietary and confidential information, which they gathered and gained only from Metro preceding that while still at Metro.

February 26th, 2013, an Internet name is established for their company and it's registered at the home of Mr. and Mrs. Houck. At that time, they are still, all three of them, dealing with Metro's clients and claims, so they're attempting to serve Metro as their master, but they're, again, in a rather devious fashion, without notice, competing with their own company for whom they are still working and with whom they are still affiliated.

When Venture advances its blog in March of 2013 all three are still working for Metro. Shortly thereafter they begin advertising. In March of '13 when the advertising occurs they're still working for Metro. They advertise in exactly the same areas where Metro has its client base, primarily Pennsylvania and New Jersey . . . You did not leave Metro of your own volition. You only left Metro, I believe you said, when you were caught. That clearly might not be so artful, but it's absolutely true.

What else does Venture do? They have a trainee and mentorship program. Where have we heard that before; from Metro. They have the same programs which their then present, now former, employer offered. Where do they offer these mentorship programs and training? In Allentown. Where have we heard that before? Metro has offices there. There is a rather professional video played for the Court where Mr. Houck is providing, for lack of a better term, a narrative infomercial for Venture. It is exactly the same business directed at the same audience as Metro. They have on the video, which is entitled "Experts in Navigating Your Claim," the same offers that Metro had at a time when they're still affiliated with Metro.

In May of 2013 Mr. Parker attends a training seminar or a convention at Caesar's in Atlantic City while he is working for Metro before his new venture is discovered. He may have solicited other business, but he certainly had the opportunity on Metro's dime to do so. What we find is that Venture is a direct competitor with Metro, in the same business, in the same endeavor and in the same geographic area.

What else do we hear? Well, they stay with Metro for some period of time. If it was that ungodly one would think they would be there for 30 days and tender their own letter of resignation, but they had to be terminated. . . .

. . . All right. So I have to look at all of the factors here. We've already determined that the Covenant Not to Compete is reasonable under all the circumstances. Metro is not saying to the Houcks or to Mr. Parker, you are never, ever to work as public adjusters anywhere. They have narrowed the focus to the areas where they have been established and where they compete and where you compete with them, and, of course, there's case law, one of which is *Quaker City Engine Re-Builders versus Toscano*, which this Court has some familiarity with, and there is strong dicta and a holding there that given today's economy, business is basically global; that they're not asking that you be prohibited from entertaining business or soliciting or accepting business anywhere on a global reach; just within their areas that they've established over a period of 20 years.

All right. We look at the factors. The key to granting a preliminary injunction is not to determine the case on the merits, but we have to make a judgment if the relief is necessary to prevent immediate and irreparable harm. Once we do that, and we find that, we have to determine whether or not, even with immediate and irreparable harm, that harm cannot be compensated by monetary damages or no adequate remedy of law. The immediate harm is they're former employees, who, without notice, in a shotgun fashion, have become their direct competitors in clear contravention of an enforceable Covenant Not to Compete. What are the damages? We don't know; they're speculative, but we do know that whatever business they've received could have gone to Metro or some other public adjuster. Instead it went to them. So they don't have an adequate remedy at law and we

can't determine damages, but we do know from the testimony of the defense that they have received some clients. Will there be greater injury from refusing the injunction? I don't see this as greater injury to Mr. Parker or the other defendants who are his business associates. I see it as what will the injury be to the person seeking the injunction?

I've heard testimony from Mr. and Mrs. Houck and from Mr. Parker, as well, that if they can't establish their business -- Venture -- that they will be laid waste financially. The answer to that is very simple. A Covenant Not to Compete is such that it doesn't prohibit you from entering into any other business other than the business of public adjusting, so it's foolish for this Court to accept that statement.

You're bright people. You're articulate. You have experience in the business world. It just can't be as public adjusters in this immediate vicinity.

We have to be concerned with returning the parties to the status quo. The status quo is very simple, and it's clear. The status quo was the parties were working for Metro and they [were] in a competing business; they're not going to get their job back at Metro, but restoring them to the status quo will be Metro's status quo where their own people were not competing for the same business in the same geographic area.

Then the Courts say we have to determine if the wrong is manifest. Well, manifest may mean clear. It seems to this Court, having heard the testimony -- and I find the testimony from the Petitioner credible and the testimony from the defense less than credible -- that the wrong is manifest and clear.

Even finding that, we have to determine whether or not the remedy of a preliminary injunction is suited reasonably to abate that manifest wrong, and we find that it is, and we find that the actions of the Houcks and of Mr. Parker are, in terms of the case law, actionable; action which can be restrained and we believe should be.

We don't reach the merits, but from what we've heard under all the circumstances we believe that plaintiff's right to relief is clear, and, more importantly, they have a strong likelihood of success on the merits. This does not mean that they have proven absolutely their right to prevail, but at this level certainly they have established all of the elements necessary to issue a preliminary injunction.

Finally, will this injunction, if granted, adversely affect or harm the public interest? No. No one other than the parties is concerned with this. It has no interest whatsoever that affects the public's right to do anything or places any restrictions upon anyone other than these litigants. So we will grant the injunction. Now we will refer to the demand for relief.

Effective immediately the three defendants, Matthew Parker, Eugene Houck and

Christine Houck, are prohibited until further Order of this Court, or two years, whichever is less, to be employed in any capacity with Venture Public Adjusting or any other competitor in the same industry as Metro in the definable areas of Pennsylvania, New Jersey, Maryland, Illinois and Colorado.
Next, the three defendants and Venture are prohibited from contacting or soliciting any business from, or servicing any clients affiliated with Metro previous to the establishment of Venture.

We have not heard any evidence that they have disclosed or transmitted any information contained in Metro's records, so we will not grant any injunctive relief absent evidence to the contrary.

We have heard that Ms. Houck has been in contact, as have the others, with other employees and independent contractors of Metro. Now, perhaps they contacted her because they were not happy with the circumstances at Metro. Your advice to them should be, then leave, but under no circumstances are you having any contact with any of these people. If they insist on contacting you, when you speak with them that will be a violation in form and in substance of this Court's issuance of a preliminary injunction.

If there are any records belonging to Metro which are in the possession of either of these defendants, or all of them, they're to be disgorged immediately to Metro. If there are no such records, then that portion of the injunction need not be enforced.

How do we abate the wrong? We'll direct that effective immediately Venture shall no longer have any business relationship with Matthew Parker, Eugene Houck and Christine Houck. That means, as well, that they will have no contact with Venture because they are Venture.

We'll direct that they have no right to contact any former clients or present customers of Metro or to service any client previously utilized through Metro. There are no damages to award. We will direct that for the enforcement of this injunction that Petitioner files a bond with the Prothonotary in the amount of $2,500 and provide proof of that to [Defendants' counsel]. That's to be done within ten days of today.

N.T. July 2, 2013, pp. 182-98.

Defendants filed a Motion for Reconsideration on July 15, 2013. This Court denied their Motion on August 1, 2013.

On July 26, 2013, Defendants filed a Notice of Appeal to the Superior Court. Defendants also filed a Statement of Errors Complained of on Appeal contemporaneously with their Notice of Appeal, alleging the following *verbatim*:

> A. The Court abused its discretion and/or made an error of law by enforcing the non-competition provision at issue because:
>
> > i. The covenant not to compete is unenforceable because the Independent Contractor Agreement ("ICA") acknowledges and emphasizes that there is no employment relationship between Plaintiff and each Defendant, which is a necessary element of a covenant not to compete;
> >
> > ii. The covenant not to compete is unenforceable because it is not tailored to protect legitimate, protectable business interests of Plaintiff;
> >
> > iii. The covenant not to compete is unenforceable because the scope of the clause is not reasonable in either its geographic or temporal terms.
>
> B. The Court abused its discretion and/or made an error of law by entering the injunction and disrupting the status quo where entering the injunction causes far greater harm than denying it would have, because it prevents Defendants from working in their chosen field even though they were just three of over 1,000 contractors purportedly working for Plaintiff, and is not in the public interest.
>
> C. The Court abused its discretion and/or made an error of law by enforcing the non-competition provision at issue because the Court should have used its "blue-pencil" equitable power to limit the geographic and temporal scope of the injunction in the event that the covenant not to compete could be enforced.
>
> D. The Court abused its discretion and/or made an error of law by entering the injunction where Plaintiff has an adequate remedy at law.

Statement of Errors, July 26, 2013.

This Opinion is filed pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

The Superior Court's review of a trial court's granting of a preliminary injunction is well-established:

> We have emphasized that our review of a trial court's order granting or denying preliminary injunctive relief is "highly deferential". This "highly deferential" standard of review states that in reviewing the grant or denial of

> a preliminary injunction, an appellate court is directed to "examine the record to determine if there were any apparently reasonable grounds for the action of the court below."

Warehime v. Warehime, 860 A.2d 41, 46 (Pa. 2004) (internal citations omitted). "Only if it is plain that no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will we interfere with the decision of the [trial court]." Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1000 (Pa. 2003).

Prior to obtaining a preliminary injunction, a party must establish six prerequisites:

> **1)** "that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages"; **2)** "that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings"; **3)** "that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct"; **4)** "that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits"; **5)** "that the injunction it seeks is reasonably suited to abate the offending activity"; and, **6)** "that a preliminary injunction will not adversely affect the public interest."

Warehime, 860 A.2d at 46-47.

The burden is upon the party who requested preliminary injunctive relief. Id.

Defendants first argue that this Court abused its discretion or made an error of law by enforcing the covenant not to compete because "there is no employment relationship between Plaintiff and each Defendant, which is a necessary element of a covenant not to compete." Statement of Errors, July 26, 2013.

For a restrictive covenant to be enforceable, it must satisfy three requirements: (1) the covenant must relate to either a contract for the sale of goodwill or other subject property or to a contract for employment; (2) the covenant must be supported by adequate consideration; and (3) the application of the covenant must be reasonably limited in both time and territory. Piercing Pagoda v. Hoffner, 351 A.2d 207, 210 (Pa. 1976).

In Piercing Pagoda v. Hoffner, the enforceability of a covenant not to compete was addressed within a franchise setting. The Supreme Court of Pennsylvania held that an employment relationship is established when a "franchise" agreement exists. Id. at 211. Particularly, where a franchisee received an opening line of inventory, basic training in fundamentals of the business, directions and guidance for market development, use of a corporate name carrying a degree of identity in the area of business, and an exclusive right to sell the product in a specified area, a franchise is considered a legitimate business interest and is therefore protectable. Thus, a covenant not to compete provision within a franchise agreement would create an employment relationship, satisfying the first requirement of a valid and enforceable covenant not to compete. See id.

The Court in Piercing Pagoda stated:

> [O]ur Courts will permit the equitable enforcement of a covenant not to compete included in a franchise agreement where the restrictions are reasonably necessary for the protection of the franchisor without imposing undue hardship on the franchisee and the restrictions are reasonably limited as to duration of time and geographical extent.

Id. at 212.

Further, in Bryant Co. v. Sling Testing and Repair, Inc. 369 A.2d 1164 (Pa. 1977), our Supreme Court once again held that a restrictive covenant was valid and enforceable outside the purview of a traditional employment setting. See id. at 1168-69 (holding that a post-employment restrictive covenant was valid and enforceable).

In Quaker City Engine Rebuilders, Inc. v. Toscano, 535 A.2d 1083 (Pa. Super. 1987), the Superior Court was presented with the issue currently on appeal – that is, "whether the rule allowing a restrictive covenant which has traditionally applied between employer and employee can be extended to a principal and an independent contractor." Id. at 1087.

In Quaker City, the Superior Court cited Piercing Pagoda, Bryant and § 516 of the Restatement (1st) of Contracts, in holding that a restrictive covenant applies to situations beyond the traditional employer-employee relationship. Id. at 1088. Based upon the facts present in Quaker City, the Superior Court held that the independent contractor relationship was "sufficiently analogous to that of an employment relationship that the same equitable principles should apply." Id. at 1087.

The facts of Quaker City are substantially similar to the facts presented here. In Quaker City, appellee was a company that sold and distributed auto and truck engines. Appellant entered into an agreement with appellee to become a sales representative in the capacity of an independent contractor. Appellant was responsible for his own expenses. The independent contractor agreement in Quaker City also contained a restrictive covenant not to engage in the manufacturing, buying, selling, or dealing in automotive products for a competitor for a period of two (2) years after termination or expiration of the independent contractor agreement. Id. at 1084-85.

Appellant ceased performing sales work for appellee, and soon thereafter commenced advertising to potential customers to purchase and rebuild engines. Id. As in the case *sub judice*, appellant in Quaker City ceased working as an independent contractor for appellee and attempted to go into the same business on his own.

As stated in Piercing Pagoda and Quaker City, our courts will extend the validity of restrictive covenants beyond the pure employment setting "**if the rationale behind the covenant can be analogized to that which exists in the employer/employee relationship**." Toscano, 535 A.2d at 1088 (emphasis added).

In reviewing the trial court's granting of the preliminary injunction, the Superior Court in Quaker City held, "Because of our Supreme Court's willingness to extend the doctrine in Piercing Pagoda, and its recognition of a post-employment covenant in Bryant, we hold that the covenant in the case at bar is sufficiently related to "a contract for employment," by reason of analogy, to give appellee **a protectible interest**." Id. at 1088 (emphasis added).

In the case *sub judice*, although we are not presented with a franchise agreement, the facts of Piercing Pagoda are substantially similar. Defendants received basic and advanced training in the public adjusting industry by Metro. Prior to their affiliation with Metro, Defendants had no prior public adjusting training or experience. Further, defendants were given specialized training and guidance as to how to develop business and obtain clients under the "Metro" name, and they were given the right to market and advertise the Metro name and conduct business for Metro under a generous commission-based compensation schedule. See Piercing Pagoda, 351 A.2d at 210. Therefore, the analysis and holding of Piercing Pagoda is applicable in this case.

Further, the impetus for the restrictive covenant in this case is to prevent independent contractors from utilizing all of the training and experience provided to them by Metro for their own pecuniary benefit. The restrictive covenant also exists to prevent independent contractors from conducting their own business in direct competition with Metro. Based upon the business model implemented by Metro --- specifically, their recruitment of trainees with no experience in the public adjusting industry --- the rationale for the restrictive covenant is to protect Metro, its business model and practices, and its viability as a company. This is the same rationale present in any traditional employer/employee relationship. Thus, applying the same analysis in Quaker City, the covenant not to compete present in this case is valid and enforceable against Defendants as it is sufficiently related to a "contract for employment" to create a legitimate, protectable business interest. See Quaker City, supra 535 A.2d 1083.

It is clear from Piercing Pagoda and its progeny that the restrictive covenant contained within all three Defendants' Independent Contractor Agreements is sufficiently related to a "contract for employment," and thus, it is valid and enforceable against Defendants.

Defendants next argue that the "covenant not to compete is unenforceable because it is not tailored to protect legitimate, protectable business interests of [Metro]." Statement of Errors, July 26, 2013.

At a minimum, for a non-competition or restrictive covenant to be enforceable, it must be "reasonably related to the protection of a legitimate business interest." Hess v. Gebhard & Co., Inc., 808 A.2d 912, 918 (Pa. 2002). "The types of interests that have been recognized in the context of a non-competition covenant include trade secrets or confidential information, unique or extraordinary skills, customer good will, and investments in an employee specialized training program." WellSpan Health v. Bayliss, 869 A.2d 990, 996 (Pa. Super. 2005). The presence of a legitimate, protectable business interest of the employer is a threshold requirement for an enforceable non-competition covenant. Id.

In Pennsylvania Funds v. Vogel, 159 A.2d 472 (Pa. 1960), our Supreme Court, characterized the third protectable interest – investments in an employee specialized training program – as the "efforts and moneys" invested by an employer to provide its employees with specialized training in the methods of its business. Id. at 476; see also Bayliss, 869 A.2d at 997-98. The Vogel Court, in finding the Plaintiff had a legitimate, protectable interest, further explained that the employer in that case "expended considerable sums of money and time . . . in maintaining an extensive and continuous training program for its employees" and much of the "training literature and instruction [was] tailored to problems unique" to the employer's business. Vogel, 159 A.2d at 475-76. The defendant in Vogel left the employ of plaintiff and "went off on his own" and founded a competitive corporation. Id. at 476.

Based upon the facts of the case sub *judice*, Metro clearly has a legitimate, protectable business interest, specifically, their investment in the specialized training of their employees and independent contractors in the public adjusting business as a whole, as well as the particular business model and practices of Metro.

It is undisputed that Metro provided Defendants all of their training in public adjusting, regardless of Defendants' subjective beliefs as to the quality of that training. All three Defendants obtained their experience in the public adjusting industry only through their affiliation with Metro, both as claims representatives and as adjusters. Metro provided the tools to be successful in the industry, including basic and advanced training, as well as their proprietary information regarding the best way to maximize profits on a claim. The evidence

adduced at the hearing indicates that all three Defendants were very successful, no doubt due to the opportunity, training, and experience provided to them by Metro. According to the uncontroverted testimony, Eugene and Christine Houck earned approximately $114,000 in 2012, and Matthew Parker earned approximately $89,000.

The covenant not to compete within the Independent Contract Agreements is designed to prevent an independent contractor from hijacking the training and experience garnered while affiliated with Metro and utilizing it to create their own business to directly compete with Metro. Indeed, this precise situation occurred in this case.

Defendants created their company, Venture Public Adjusting, LLC, in March of 2013, while they were are still affiliated with Metro and actively involved in dealing with claims belonging to Metro. Defendants advertised and marketed their business, which is in the same industry and handles the same claims as Metro, in the areas of Pennsylvania, New Jersey, and Maryland, where Metro conducts its business.

In one instance, Venture Public Adjusting, LLC advertised in Allentown, Pennsylvania for their mentorship program. Metro has an office located in Allentown, PA and their business model closely resembled the "mentorship" program offered by Defendants' new company, Venture Public Adjusting, LLC. Defendants continued to market their new company utilizing an assortment of social media and traditional advertising while still affiliated with Metro. Matthew Parker even solicited more claims from Metro while in the process of establishing Venture Public Adjusting, LLC with the Houcks.

Defendants, Eugene and Christine Houck, deny soliciting any of Metro's clients or customers, or implementing any of the business practices of Metro. Eugene and Christine Houck ignore the blatantly obvious and egregious example of their solicitation of Matthew Parker, a successful adjuster with Metro. Parker testified that he was interviewed by Christine and Eugene Houck, and after these interviews, he decided to join with them in the creation of Venture Public Adjusting, LLC.

Defendants failed to advise Metro of their new company, and only when it was discovered by executives of Metro were these Defendants' terminated from their affiliation with Metro.

All of the above findings are undisputed. Metro's covenant not to compete is designed to prevent independent contractors from taking all the benefits of training and experience in the public adjusting industry and using it to their own advantage, in direct competition with Metro. This covenant not to compete is not only a legitimate, protectable business interest, it is necessary for the viability and continued profitability of Metro.

Defendants next argue that "the covenant not to compete is unenforceable because the scope of the clause is not reasonable in either its geographic or temporal terms." Statement of Errors, July 26, 2013.

The covenant not to compete at issue in this case, states, in pertinent part, as follows:

> During the term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement . . . Contractor shall not compete with Metro or Metro Subsidiaries in any state of the United States where Contractor or Metro or Metro subsidiaries are licensed during the Restriction Period and shall not work (whether as an independent contractor, employee, or otherwise) for any person who was formerly associated with Metro or Metro Subsidiaries, whether as an independent contractor, employee or otherwise.

Independent Contractor Agreement.

Metro filed a preliminary injunction on June 21, 2013, seeking to enjoin Defendants from "[c]ompeting with Metro in Pennsylvania, New Jersey, Maryland, Illinois and Colorado" and "[c]ontinuing or maintaining employment . . . in the public adjustment industry" in the aforementioned states; and/or (3) "contacting or soliciting business from and/or servicing any Metro clients." Metro's Petition for Preliminary Injunction, June 21, 2013.

Covenants not to compete must be reasonable with respect to geographical scope and duration. Trilog Assocaties, Inc. v. Famularo, 314 A,2d 287 (Pa. 1974). The inquiry as to what is "reasonable" is fact-specific, requiring the court to consider the relationship between the

geographic and temporal restrictions, as well as the nature of the employer's legitimate business interests. See Robert Clifton Associates v. O'Connor, 487 A.2d 947 (Pa. Super. 1985).

Regarding durational limits, "[c]ourts seldom criticize restraints of six months or a year on the grounds of duration as such, and even longer restraints are often enforced." Boldt Machinery & Tools, Inc. v. Wallace, 366 A.2d 902, 907 (Pa. 1976).

With respect to geographical limitations, the determination of reasonableness will depend upon a variety of factors, including the scope of the area in which the employee has performed services and developed a customer base, as well as the geographic scope of the employer's business. See, e.g. Bettinger v. Carl Berke Association, Inc., 314 A.2d 296 (Pa. 1974).

In determining whether a covenant not to compete is reasonable, both as to time and territory, the courts have focused upon the interest of the employer which is sought to be protected by the restrictive covenant. See Wallace, 366 A.2d 907.

In this case, the restrictive period is two (2) years. The temporal limitation is certainly reasonable, and is generally upheld by Pennsylvania courts. See, e.g. John G. Bryant Co. v. Sling Testing & Repair, Inc., 369 A.2d 1164 (1977)(upholding three-year restriction); AMP Inc. v. Aksu, 237 F.Supp. 601 (M.D. Pa. 1964)(upholding two-year restriction); Jacobson & Co. v. International Env. Corp., 235 A.2d 612 (1967)(upholding two-year restriction); Hayes v. Altman, 225 A.2d 670 (1967)(upholding three-year restriction); Harry Blackwood, Inc. v. Caputo, 434 A.2d 169 (1981)(upholding three-year restriction).

Regarding the geographic scope of the covenant not to compete, Metro conducts the majority of its business in Pennsylvania and New Jersey, with the remainder of its offices spread throughout Maryland, Illinois, and Colorado. Clearly, Metro seeks only to prevent Defendants from creating their own public adjusting company in the states where Metro has offices and where it has established public adjusting services.

Further, Defendants are not prohibited from working in the public adjusting industry. Defendants can obtain a public adjusting license, if necessary, in 45 of 50 states, including Delaware and New York. Their company, Venture Public Adjusting, LLC, is also not prohibited from operation in 45 of 50 states. All Defendants can continue their work in the public adjusting industry or find employment in the various fields of occupation in which they engaged prior to their affiliation with Metro.

The covenant not to compete is reasonable in duration and is narrowly tailored in geographical scope as to only prevent Defendants from directly competing with Metro in the states where it does business. As previously discussed, Metro's business model and their trainee program constitute a protectable business interest; this covenant not to compete simply advances and protects that interest. The covenants not to compete also do not constitute an undue hardship upon Defendants as they are not prohibited from working in the public adjusting industry.

Defendant next argues that this "Court abused its discretion and/or made an error of law by enforcing the non-competition provision at issue because the Court should have used its "blue-pencil" equitable power to limit the geographic and temporal scope of the injunction in the event that the covenant not to compete could be enforced." Statement of Errors, July 26, 2013.

This Court acknowledges its equitable power to modify restrictive covenants so as to come into compliance with the reasonableness requirements, however, as discussed above, we declined to do so based upon our determination that the covenant not to compete was reasonable in geographic scope and duration as written – i.e. it extended no further than is necessary to protect the employer's reasonable business interests. See, e.g., Sidco Paper Co. v. Aaron, 351 A.2d 250 (1976); Jacobson & Co. v. International Environment Corp., 235 A.2d 612 (1967).

Defendant's last contention on appeal is that this "Court abused its discretion and/or made an error of law by entering the injunction where Plaintiff has an adequate remedy at law." Statement of Errors, July 26, 2013.

Injunctive relief is appropriate where there is no adequate remedy at law. The Woods at Wayne Homeowners Ass'n v. Gambone Bros. Const. Co., Inc., 893 A.2d 196 (Pa. Commw. Ct. 2006). Injunctive relief is warranted in cases where the harm is not subject to exact valuation and compensation through damage awards. Pestco, Inc. v. Associated Products, Inc., 880 A.2d 700 (2005). A party seeking an injunction must show that it is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages. Com. ex rel. Corbett v. Snyder, 977 A.2d 28 (Pa. Commw. Ct. 2009).

Based upon all of the testimony heard by this Court, it is clear that the money damages, if any, are speculative at this time. There has been no evidence presented that would indicate any valuation of money damages. The preliminary injunction is necessary to prevent Defendants, who created their own public adjusting company while working for Metro, from directly competing with Metro in their own market. As gleaned from the testimony, Venture Public Adjusting, LLC is advertising for their trainee program in the same regions of Pennsylvania and New Jersey where Metro's offices are located and where they generate most of their business. By enjoining Defendants from operating in the same regions as Metro, they are prevented from acquiring customers and potential customers from Metro, as well as any potential employees that would otherwise participate in Metro's trainee program.

It is clear then, that based upon the unique facts of this case, a preliminary injunction was appropriate.

For the foregoing reasons we recommend that Defendants' appeal be denied.

BY THE COURT:

ALAN M. RUBENSTEIN, J.

DATE: 8/15/13