UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
INTEGRATED HEALTH SERVICES, INC., et al.,	)	Case No. 00-389 (MFW) through 00-826 (MFW)
	)	
Debtors.	)	(Jointly Administered Under Case No. 00-389 (MFW))
	)	
ROTECH MEMORIAL HOSPITAL, EAST TENNESSEE INFUSION AND RESPIRATORY INC., D/B/A FOX HOME MEDICAL,	)	
	)	
Plaintiff,	)	Adversary No. 00-1145 (MFW)
	)	
v.	)	
	)	
BLOUNT MEMORIAL HOSPITAL JOSEPH FOX, JILL FOX, STACY FOX, STEPHEN COX, DONALD TALLEY, STEPHANIE REDWINE, SUE MCMURRAY, KATRINA SPRINGS, JON MILLER, MATTHEW JENKINS AND THOSE UNKNOWN IN CONCERT WITH THE DEFENDANTS,	)	
	)	
Defendants.	)	

OPINION[1]

Presently before the Court are motions to reconsider our November 9, 2000, Decision and Order (the "Decision" and "Order") filed by Defendants Donald Talley, Stephanie Redwine, Jill Fox, Matthew Jenkins, and Sue McMurray (collectively, "the Defendant Employees") and a motion to amend or clarify our Decision and Order by Defendant Blount Memorial Hospital ("Blount").

[1] This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. FACTS

The background facts are detailed in our Decision. In our Order, we enjoined Blount from employing any of the former or current employees of one of the Debtors, East Tennessee Infusion and Respiratory, Inc., d/b/a Fox Home Medical ("Fox"), or soliciting any of Fox's former or current customers. We also directed the Defendant Employees to turn over any of Fox's property which is in their possession.

II. DISCUSSION

A motion for reconsideration under Federal Rule of Bankruptcy Procedure 9023 is an extraordinary means of relief in which the movant must do more than simply reargue the facts or law of the case. See North River Ins. Co v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)(a motion to reconsider must rely on one of three major grounds: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error [of law] or prevent manifest injustice")(quoting Natural Resources Defense Council v. United States Envtl. Protection Agency, 705 F. Supp. 698, 702 (D.D.C. 1989)); Harsco Corp. v. Zlotnicki, 779 F.2d 906, 908 (3d Cir. 1985)("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence"); Dentsply Int'l., Inc. v. Kerr Mfg. Co., 42

F. Supp.2d 385, 417 (D. Del. 1999)("[motions for reargument] should be granted sparingly and should not be used to rehash arguments already briefed or allow a 'never-ending' polemic between the litigants and the Court").

A. Blount's Motion to Amend or Clarify

Blount's motion is premised, in part, upon our conclusion in the Decision that the Debtors are likely to succeed in establishing that Blount tortiously interfered with the Debtors' business relations. To the extent that Blount seeks to reassert its prior position regarding our evidentiary findings or legal conclusions, we conclude that we have not made a "clear" or "manifest" error and therefore Blount has failed to meet the standards required for reconsideration or reargument.

Because we found it likely that the Debtors would succeed on the merits of their claim, we granted a preliminary injunction prohibiting Blount from hiring any of Fox's current or former employees or soliciting any of the former or current customers of Fox pending a final determination of the merits of the adversary. In its motion to amend or clarify, Blount asserts that the injunction was not narrowly tailored to the harm which we concluded was caused by Blount. See Davis v. Romney, 490 F.2d 1360, 1370 (3d Cir. 1974)("Injunctions . . . must be tailored to remedy the specific harms shown"); Old Charter Distillery Co. v.

Continental Distilling Corp., 174 F. Supp. 312, 331 n.127 (D. Del. 1959)("Injunctions . . . should be no broader than is necessary to give adequate protection to the plaintiff").

Blount raises a number of issues for clarification:

> (1) Whether Blount should be enjoined from contacting or soliciting a current hospital patient who was not a customer of Fox when this adversary proceeding was filed but is now a customer of Fox;
>
> (2) Whether Blount should be enjoined from contacting or soliciting a current hospital patient who was not a customer of Fox at the commencement of this adversary proceeding but is a Fox customer now and also has need of non-oxygen services (which the Debtors do not provide);
>
> (3) Whether Blount should be enjoined from contacting or soliciting a Fox customer (as of the date of the adversary proceeding) who was not a hospital patient at the commencement of the adversary proceeding, but now is a hospital patient who has need of non-oxygen DME services; and
>
> (4) Whether Blount should be enjoined from contacting or soliciting a patient for home health care services where that patient was a Fox customer at the time the adversary proceeding was commenced but where Fox was not rendering home health care services to that patient.

We agree with Blount that the language in the original Decision and Order extends too far because it exceeds the relief needed to remedy the harm caused by Blount's interference with the business of Fox. In the Decision, we concluded that an

injunction was necessary to shield Fox from the possible harm caused by Blount's actions. We did not intend it to be wielded as a sword to give Fox a competitive advantage.

Specifically, we found that Blount had improperly received Fox's customer list, as well as financial and other business information about Fox. We therefore concluded that an injunction was necessary to prevent Blount from using that information. However, we did not intend to prevent Blount from competing with Fox through legitimate means. That is, we did not intend to prohibit Blount from competing with the Debtors for future customers, so long as Blount did not use information improperly obtained. Prohibiting Blount from soliciting anyone who was a customer of Fox as of the filing of the adversary proceeding permits competition but denies Blount any advantage from its improper actions.

Blount also asks for clarification of the types of services to which the injunction applies: that is, if a patient was receiving one service from Fox pre-petition, may Blount solicit that customer for a different service. Because Blount's conduct has given it an unfair advantage (by identifying potential customers for home health services), we conclude that Blount should not be permitted to solicit any person who was a customer of Fox prior to the date of the commencement of this adversary

proceeding for the same service or any service which Fox offers. We will clarify the Decision and Order accordingly.

B. The Motions for Reconsideration of Ms. Redwine, Mr. Jenkins, and Mr. Talley

In their respective motions, Ms. Redwine, Mr. Jenkins and Mr. Talley assert that there was evidence that other employees breached their duty to the Debtors by, inter alia, witnessing the transfer consent forms. However, they assert that there was no evidence presented that they had any improper contact with any Fox customers or that they committed any acts which would give rise to an allegation of breach of duty of their loyalty.[2]

We agree that the record does not contain any evidence which specifically demonstrates that Ms. Redwine, Mr. Jenkins, or Mr. Talley breached their fiduciary duty. Our original decision was not premised on such a finding, however. It was based on our preliminary finding that Blount had interfered with Fox's contracts with its customers and employees.

Consequently, we only enjoined the Defendant Employees from leaving the Debtors' employ and going to work for Blount.[3] The

[2] Talley also asserts he retired from Fox and does not seek to be employed by Blount. The Debtors have agreed to dismiss him from the adversary, although no stipulation has been filed yet.

[3] We also required the employees to turn over any property of the Debtors which is in their possession, pursuant to section 542 of the Code.

Defendant Employees are not prohibited from being employed by anyone else in any industry, including the DME industry. They may work for any employer who is willing and able to hire them. Blount, however, has been prohibited from hiring any of the former employees of Fox because of its improper action.

Even if we had not enjoined the Defendant Employees from working for Blount, the effect of our Order would be the same since Blount is enjoined from hiring them. Therefore, the motions for reconsideration of Ms. Redwine, Mr. Jenkins, and Mr. Talley are denied.

C. Ms. Fox's Motion for Reconsideration

We noted on page 10 of the Decision that the Debtors and Ms. Fox had agreed that Ms. Fox could be employed by Blount so long as she did not work in the DME business. We inadvertently omitted that provision from the Order. Therefore, we grant the Motion of Ms. Fox for Reconsideration and will modify our Order accordingly.

D. Ms. McMurray's Motion for Reconsideration

Ms. McMurray had a non-compete agreement with Fox. Consequently, in our Decision and Order, we enjoined her from going to work for any competitor of Fox. However, that agreement expired by its terms on July 31, 2000. We did not intend to

extend the term of that agreement but only to enforce it. Therefore, we will modify our Order to delete any prohibition against Ms. McMurray working for any other company which competes with Fox, except Blount.

III. CONCLUSION

For the foregoing reasons, we reaffirm, in part, and clarify, in part, our November 9, 2000, Decision and Order.

BY THE COURT:

Dated: January 5, 2001

Mary F. Walrath
United States Bankruptcy Judge

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	)	
Defendants.	)	
	)	

O R D E R

AND NOW, this **5TH** day of **JANUARY, 2001**, upon consideration of the Motions for Reconsideration of Jill Fox, Matthew Jenkins, Donald Talley, Stephanie Redwine, and Sue McMurray, and the Motion to Amend or Clarify of Blount Memorial Hospital, it is hereby

ORDERED that the Motion to Amend or Clarify of Blount Memorial Hospital is **GRANTED**, in part, as follows: Blount is

enjoined from directly contacting or soliciting anyone who was a customer of Fox prior to the date of the filing of this adversary proceeding for any service which Fox was providing (or could have provided); and it is further

ORDERED that the Motion for Reconsideration of Ms. Redwine, Mr. Jenkins, and Mr. Talley is **DENIED**; and it is further

ORDERED that the Motion for Reconsideration of Ms. Fox is **GRANTED** to permit Blount to employ Ms. Fox so long as she does not work in the DME business; and it is further

ORDERED that the Motion for Reconsideration of Ms. McMurray is **GRANTED** and our Order is modified to delete any prohibition against Ms. McMurray working for any other company which competes with Fox, except Blount.

BY THE COURT:

_____
Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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