

Pro-Solutions Sued for Breach of Contract

DISPUTE BETWEEN THE MANUFACTURER AND RESELLER OF THE PROADJUSTER IS AT THE HEART OF THE \$400,000-PLUS LAWSUIT.

Editorial Staff

In September, a few ProAdjuster owners received an e-mail communication from Sigma Instruments, the manufacturer of the ProAdjuster equipment. The e-mail informed doctors that they would be receiving their key codes from Sigma rather than from Pro-Solutions, the company that previously sold the ProAdjuster units. In further communication, these doctors were told that should they require any assistance regarding their unit, they could go directly to Sigma.

According to Sigma, these key codes are very important. Without them, the ProAdjuster unit just stops working. Previously, new key codes were required every three months. Until the Sigma communication, Pro-Solutions was the only source of these key codes.

Sigma's actions were, in effect, the first public indication of what was to come a few days later: [a major lawsuit in Pennsylvania](#) against Pro-Solutions for alleged breach of contract and "commercial disparagement."¹ The suit was filed on Oct. 6, 2009 in Allegheny County, Pa. Under Pennsylvania state law, "commercial disparagement" is broadly similar to libel in that it provides a remedy to businesses whose products or services are allegedly disparaged by the false statements of others.



A dispute between the manufacturer and reseller of the ProAdjuster is at the heart of the \$400,000-plus lawsuit filed earlier this month in Pennsylvania.

Among other claims, the lawsuit's first count alleges that Pro-Solutions owes Sigma \$427,490 for 52 ProAdjusters that Pro-Solutions purchased and didn't pay for (a total of \$416,000), plus repair work totaling an additional \$11,490. The second count focuses on who actually invented and developed the ProAdjuster unit. Sigma claims that Pro-Solutions "did not invent or develop the system," but are claiming that they did "on their website, through press releases and in seminars."

Included with the lawsuit are exhibits of the unpaid invoices from Sigma to Pro-Solutions. The price per unit for the "ProAdjuster" Waveform Adjusting Instrument, as listed on these invoices, is \$8,000.

According to Sigma, approximately 2,000 doctors of chiropractic have purchased the ProAdjuster equipment, many times as part of a package that included a variety of products and services. According to invoices, these packages have cost an individual doctor as much as \$89,995; a price

that some doctors retrospectively feel was much too high.

When asked about the price of the package, Pro-Solutions and Sigma had different opinions.

[According to Dr. Maurice "Moe" Pisciotano](#), president and CEO of Pro-Solutions:¹

"We would respond by sharing with you that the ProAdjuster *equipment package* is comprised of not only a ProAdjuster adjusting computer, but [also] many other vendor-supplied products. Our *equipment package* includes a wide range of items, and I think this clarification could be helpful.

"The adjusting instrument computer that is supplied by Sigma Instruments is only one part of the ProAdjuster equipment package that the question refers to. This list (below) represents some of the key components and the different vendors involved in most all of the packages we have offered our customers:

- The ProAdjuster technique chair designed by Dr. Pisciotano
- The workstation by Dr. Pisciotano
- Patient education by Visual Odyssey and Bruce Goldsmith and by Dr. Pisciotano
- Software with our patent-pending treatment protocols owned by Dr. Pisciotano
- Educational periodicals supplied by multiple sources by Dr. Pisciotano and [the] team at Pro-Solutions
- Copyrighted books by Drs. Maurice Pisciotano and Rick Barrett
- Orthotic scanner and software by Foot Levelers and Kent Greenawalt, integrated into a chair design by Dr. Pisciotano
- Computers and touch screens by multiple suppliers
- Media reproduction companies
- Media reproduction editing companies
- Website developers

"Pro-Solutions also includes, inside of the equipment package, training for Doctors of Chiropractic and their staff," explained Dr. Pisciotano.

In an interview with *Dynamic Chiropractic*, John Crunick, president of Sigma, [had a different perspective on pricing](#):¹ "Sigma did not have any control over the prices Pro-Solutions was charging. We watched as the prices charged to the end user continually increased. The internal stated goal from Pro-Solutions was to add enough low-cost items to our instrument to have a \$100K package. This type of business, in my opinion, is not customer-centric. And to answer your question, yes I would consider it excessive. While the bottom line is important, one must maintain a sense of equity. Our motto has always been to help add to the success of doctors."

The issue of who invented and developed the ProAdjuster Waveform Adjusting Instrument appears to have less debate. Dr. Pisciotano admits that "the computer supplied to Pro-Solutions from Sigma Instruments and the adjusting head were developed by the owners of Sigma Instruments. There are some patents connected to this technology *not owned* by Sigma Instruments or Pro-Solutions. Sigma Instruments currently has only one patent on the ProAdjuster adjusting equipment and it is related to the software information and analysis. Sigma Instruments does not own patents on the adjusting head; these patents are owned by an entity unrelated to Sigma instruments."

Crunick concurs that "we develop, produce, manufacture and most importantly, service the equipment. This equipment was invented by the collaboration between myself and my two partners, Tamas Becse and Lou Laskey. Some people might even remember the SMART ADJUSTER and the AcuWave system that we sold several years before Pro-Solutions was even involved."

Doctors can currently purchase used ProAdjuster equipment online for as low as \$7,500, but according to Crunick, until recently those doctors would be required to pay a "transfer fee" that is sometimes as high as \$10,000 to Pro-Solutions in order to get the key-code rights transferred to the new owner:

In a follow-up interview, Crunick said: "ProAdjuster users were required to call in to request new key codes every three months. This was used as a way to get doctors to call in so they (Pro-Solutions) could solicit them for additional sales. It was also used to control who owned the machine and force owners to pay a transfer fee to Pro-Solutions in order to sell the equipment to another doctor. This was as high as \$10,000.

"Pro-Solutions is no longer authorized to provide key codes. Doctors can call Sigma for key codes that will now last up to a year. No transfer fee will be required."

Attorneys representing several ProAdjuster owners, as well as the doctors themselves, claim that they did receive the ProAdjuster unit, but didn't receive the additional services as promised or that the additional goods and services didn't measure up to what was represented. Doctors report that they are happy with their ProAdjuster machine, but very unhappy with some of the additional details of the sale.

A cross-action was filed last May by a Texas DC in litigation with her leasing company and Dr. Pisciotano. The action centers around "marketing and consulting services" that were sold to her as part of the ProAdjuster CEO Program, specifically the recruiting and training of an associate for the doctor's office. [According to the complaint:](#)¹

"As a direct and proximate result of Cross-Defendants' willful refusal and failure to recruit, train and staff Cross-Plaintiff's Houston, Texas chiropractic facility with an associate doctor suitably trained in providing ProAdjuster Treatment Program related services, Cross-Plaintiff, acting alone, in her capacity as an independent doctor of chiropractic, was unable to generate and/or sustain the level of business required to generate the level of revenue needed to make and/or continue making, those lease payments required under the terms of the *Equipment Lease Agreement* entered by and between Cross-Plaintiff and Cross Defendant Pro Adjuster Finance Corporation, as well as her subsequent lease obligations to Leaf Funding, Inc., who became the assignee of Pro Adjuster Finance Corporation's *Equipment Lease Agreement*."

When specifically asked about "complaints from doctors regarding the additional products and services that they were to have received with their equipment", Dr. Pisciotano stated:

"Pro-Solutions strives to keep our satisfied customers percentage at 98%. We have always been able to maintain that corporate goal for over 10 years. However, as with any company, it is difficult to make everyone happy but we work with all clients to rectify issues in a timely [manner]. If any of your readers have unresolved issues, we would invite them to call our office so that we have the opportunity to improve their situation."

When asked if they had received "complaints from (ProAdjuster) doctors regarding the additional products and services that they were to have received with their equipment," Sigma president John Crunick commented:

"We have and this was of concern to us for quite some time. We passed the complaints on to [Pro-Solutions] when we received them. These concerns were also voiced from people within their company. It seemed the direction of Pro Solutions was to provide not only technology, but everything from coaching, advertising, websites, beds and billing [to] office software. A jack of all

trades is master of none. And we were informed there were delivery issues on many of these items.

"In the area of complaints, I would like to also add, that recently, we have been receiving complaints from doctors that paid for but were not receiving OUR technology. The excuse was given that we could not produce the equipment fast enough. This is completely untrue."

Reference

1. A complete copy of Sigma's initial complaint, the cross action filed by the Texas DC, the new \$9,995 ProAdjuster Advantage promotional e-mail, and the complete e-mail interviews of both Dr. Pisciotano and Sigma president John Crunick are available online at www.dynamicchiropractic.com/proadjusterlawsuits.

NOVEMBER 2009