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21ST JUDICIAL CIRCUIT

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From: Terry James, Division 13

Subject: Amer Eagle v StL City

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IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

FILED

DEC 10 2013

AMERICAN EAGLE WASTE)
INDUSTRIES LLC, *et al.*,)
)
Plaintiffs,)
)
v.)
)
ST. LOUIS COUNTY, MISSOURI,)
)
Defendant.)

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Cause No. 08SL-CC02198-02
Division 13

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This matter was heard on remand from the Supreme Court of Missouri. *American Eagle v. St. Louis County*, 379 S.W.3d 813 (Mo. 2012). All parties appear in person and by counsel and evidence was adduced. Having considered the evidence, exhibits, and arguments of the parties, the Court enters the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiffs' witness, C. Eric Ficken, CPA, CVA, CFF, was retained by Plaintiffs as an expert to form an opinion on the damages sustained by Plaintiffs. Defendant County presented no expert, nor any witnesses at the hearing. The County's position is Plaintiffs have proved no damages.
2. The Court finds Mr. Ficken is qualified as an expert witness to testify as to Plaintiffs' damages on the basis of his knowledge, experience, and education.
3. The Supreme Court held the proper measure of damages in this case to be Plaintiffs' net profits during the two-year waiting period. *American Eagle*, 379 S.W.3d at 833.

4. "In general, in calculating lost profits damages, lost revenue is estimated, and overhead expenses tied to the production of that income are deducted from the estimated lost revenue." *Id.* citing *Ameristar Jet Charter, Inc. v. Dodson Int'l Parts, Inc.*, 155 S.W.3d 50, 55 (Mo. 2005).

5. The Supreme Court determined the relevant two-year damages period began on April 8, 2008 for district 3 and June 10 and 17, 2008 for the other districts. *American Eagle*, 379 S.W.3d at 835.

6. Mr. Ficken appropriately calculated the lost profits of each of the Plaintiffs by calculating lost revenue and then deducting the overhead expenses tied to the production of that revenue (i.e. variable costs and not fixed costs). His calculation of lost revenue was based upon on the number of customers each Plaintiff lost in the 2 year period. Lost customers were identified from databases collected from each Plaintiff, which included the names and address of their customers, the types of service they had, the monthly rates paid, as well as the start and end dates.

7. Mr. Ficken's lost revenue also included estimated growth rates within the districts in which Plaintiffs were no longer able to operate as a result of the County's trash program. Mr. Ficken's calculated the following losses associated with Plaintiffs' growth: American Eagle, \$897,095; Meridian, \$284,137; and Waste Management, \$137,990 for District 3 and \$1,343,594 for the remaining districts, for a total of \$1,482,584. The Court rejects the inclusion of these "growth" damages as too speculative.

8. Mr. Ficken also considered billing increases each Plaintiff would likely have implemented in the districts had they continued to be allowed to operate in those districts. For Meridian, Mr. Ficken calculated a loss associated with rate increases at \$102,614. For Waste

Management, Mr. Ficken calculated a loss associated with rate increases at \$92,635 for District 3, and \$879,447 for the remaining districts for a total of \$972,082. This Court rejects the inclusion of these "billing increase" damages as too speculative.

9. Unique to Waste Management was a \$1.50 billing fee per invoice. Mr. Ficken calculated Waste Management would have lost in billing fees of \$276,708. This Court includes the "fee" damages because they were part of the actual revenue Plaintiff Waste Management would have received from customers in the two year period.

10. To determine expenses associated with the generation of the lost revenue, Mr. Ficken reviewed each Plaintiffs' unverified profit and loss statements from 2006 through 2010. These profit and loss statements resulted in a calculation of greater damages than merely using Plaintiffs' income tax returns. However, the Court finds the expert reasonably relied on these profit and loss statements, and although not verified, were otherwise reliable.

11. Mr. Ficken determined in his expert opinion those items which were "variable costs" and those that were "fixed costs" and only deducted the variable costs to reach his damage calculation. The Court believes this is a proper calculation of net profits.

12. The expert also calculated various items of "savings" resulting from not having the contracts with the customers for the two year period. However, this Court believes Plaintiffs' damages are calculated as if they did have the revenue from those customers for two years, and, therefore, has not deducted any savings.

13. Mr. Ficken's opinion was American Eagle suffered \$1,490,584 in loss of operating income.

14. Mr. Ficken's opinion was Meridian Waste suffered \$771,237.00 in loss of operating income.

15. Mr. Ficken's opinion was Waste Management suffered \$7,399,456.00 in loss of operating income.

16. The claimed additional damages for disposal fees, uncollectible accounts, and severance packages are not included as damages by this Court as either too speculative or not the proper method of computing damages because the damages are the net profits Plaintiffs would have had if they actually did have the business for the two year period. The Court has also not deducted the "savings" calculated because the damages are the net profits Plaintiffs would have had if they actually did have the business for the two year period.

17. Plaintiffs are not entitled to an award of prejudgment interest because the method of calculation of net profit damages was uncertain and required decision by the Court as to what items were properly included in the calculation.

JUDGMENT

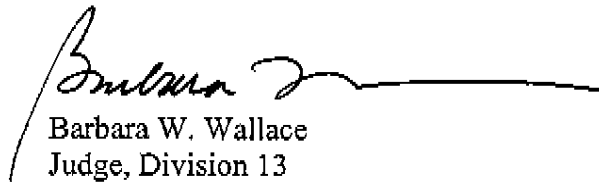
Accordingly, the Court enters its Order and Judgment as follows:

Plaintiff American Eagle shall have and recover from Defendant St. Louis County the amount of \$593,489.00.

Plaintiff Meridian Waste shall have and recover from Defendant St. Louis County the amount of \$384,486.00.

Plaintiff Waste Management shall have and recover from Defendant St. Louis County the amount of \$4,944,790.00.

SO ORDERED:


Barbara W. Wallace
Judge, Division 13

Entered this 10 day of December, 2013

CC: Jane Dueker
Patricia Redington