

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FIRETREE, LTD,	:	NO. 06-02,136
Plaintiff	:	
vs.	:	CIVIL ACTION - LAW
	:	
BFI WASTE SERVICES OF PENNSYLVANIA, LLC	:	
and RIVERPORT INSURANCE COMPANY,	:	
Defendants	:	

OPINION IN SUPPORT OF ORDER OF AUGUST 10, 2010,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Plaintiff appeals this Court's Order of August 10, 2010, which entered summary judgment in its favor and against Defendant BFI on a property damage claim.<sup>1</sup> In its Statement of Matters Complained of on Appeal, Plaintiff contends that the Court's Order of December 30, 2008, which granted Defendant BFI's Motion for Summary Judgment with respect to Plaintiff's claim for business interruption, is not supported by the evidence of record or the applicable law, and that the Court erred in "not allowing Firetree to introduce expert testimony on the business interruption claim."

With respect to the entry of summary judgment in favor of Defendant BFI on Plaintiff's business interruption claim, as explained in the Order of December 30, 2008, the Court determined that the evidence offered by Plaintiff to support its claim, that the property damage caused a loss of business in the amount of \$1,179,834.00, was much too speculative to submit the matter to a factfinder. Plaintiff's claim for \$1,179,834.00 was based on "the number of beds affected by the garbage truck accident,<sup>2</sup> multiplying that number by the per diem rate Firetree receives for those beds, multiplying that number by the number of days during which those beds were affected, and subtracting fixed costs that would not be incurred as a result of those beds being affected".<sup>3</sup> This claim assumes a 100% occupancy rate but as Defendant BFI pointed out in its motion for summary judgment, the evidence showed that Plaintiff had never experienced a 100% occupancy rate and no one had ever been turned down by Plaintiff during the time the building was damaged, for lack of bed capacity. Plaintiff responded by arguing that had the damaged portion of the building been available, it would have marketed the

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1 One of Defendant BFI's garbage trucks crashed into the corner of Plaintiff's building, causing \$76,100 in physical damage to the building.

2 Plaintiff's building was used to house inmates referred by the Department of Corrections.

3 Plaintiff's Response to Defendant BFI's Motion for Partial Summary Judgment, filed July 28, 2008, at

program more heavily. Even were “marketing” an option to Plaintiff,<sup>4</sup> such a vague statement offers nothing to allow a factfinder to determine how many inmates would have been turned away based on such increased “marketing”. The Court therefore did not allow the claim to go to a jury.

With respect to the issue of expert testimony, the Court notes that on June 30, 2008, Defendant BFI filed a motion in limine to preclude Plaintiff from calling any expert witness at trial based on Plaintiff’s failure to identify any expert or produce an expert report before the deadline set forth in this Court’s case management order. In its Response to Defendant BFI’s Motion for Partial Summary Judgment, filed July 28, 2008, Plaintiff argued that “no expert testimony is required for the court to understand the straightforward facts supporting Firetree’s claims of damages”,<sup>5</sup> and at argument, Plaintiff’s counsel indicated to the Court that he did not plan to call any expert witness at trial. Based on those representations, the Court did not address the motion in limine any further. Thus, the Court did not “not allow” Plaintiff the right to call an expert witness, and since the Court does not understand Plaintiff’s complaint in this regard, no further explanation can be provided.

Dated: \_\_\_\_\_

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Maria Casey, Esq., 800 West Fourth Street, Williamsport, PA 17701  
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Hon. Dudley Anderson

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paragraph 49.

4 As was noted in this Court’s Order of December 30, 2010, Plaintiff’s counsel admitted at argument that since participants in its program come from the Department of Corrections, there is really no “marketing” involved.

5 See Paragraph 49 of that response.