

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

AMERICAN EAGLE WASTE)	No. ED101373
INDUSTRIES, LLC, MERIDIAN WASTE)	
SERVICES, LLC, and WASTE)	
MANAGEMENT OF MISSOURI, INC.,)	Appeal from the Circuit Court
)	of St. Louis County
Respondents/Cross-Appellants,)	08SL-CC02198-02
)	
vs.)	
)	Honorable Barbara W. Wallace
ST. LOUIS COUNTY, MISSOURI,)	
)	
Appellant/Cross-Respondent.)	Filed: February 24, 2015

St. Louis County, Missouri (“the County”) appeals the trial court’s judgment awarding American Eagle Waste Industries, LLC (“American Eagle”), Meridian Waste Services, LLC (“Meridian”), and Waste Management of Missouri, Inc. (“Waste Management”) (collectively “Haulers”) damages on their declaratory judgment claim arising out of the County’s liability for violating section 260.247 RSMo Supp. 2008.¹ Section 260.247 required the County to give Haulers two-year notice by certified mail before the County commenced its own trash collection services. *State ex rel. American Eagle Waste Industries v. St. Louis County*, 272 S.W.3d 336, 341-44 (Mo. App. E.D. 2008); sections 260.247.1 and .2. In deciding a previous appeal involving the County and Haulers, the Missouri Supreme Court held that the County was liable to Haulers for violating section 260.247, set forth the standard for measuring Haulers’ damages, and remanded the cause to the trial court for both parties to engage in discovery, present evidence, and cross-examine witnesses with respect to the amount of damages Haulers were entitled. *American Eagle Waste Industries, LLC v. St. Louis County*, 379 S.W.3d 813, 831-33 (Mo. banc 2012).

Upon remand, the trial court held a bench trial and entered the judgment at issue in the instant case awarding American Eagle \$593,489.00 in damages for lost profits, Meridian \$384,486.00 in damages for lost profits, and Waste Management \$4,944,790.00 in damages for lost profits. In entering its judgment, the trial court relied on the expert opinion of C. Eric Ficken. The trial court rejected the portion of Ficken’s opinion which included damages for growth, rate increases, disposal fees, uncollectible accounts receivable, and layoff costs in his assessment of lost profits, finding that those categories of damages were too speculative or were otherwise inappropriate for the calculation of damages. However, the trial court found that Ficken otherwise appropriately calculated the lost profits of each Hauler by calculating lost

¹ All further statutory references to section 260.247 are to RSMo Supp. 2008, which incorporates legislative amendments through 2007.

revenue based upon the number of customers each Hauler lost in the two-year waiting period and then deducting the overhead expenses tied to the production of that revenue.

AFFIRMED.

Division Four holds:

- (1) It was not necessary for Haulers to prove its past profits and expenses in order to recover damages for lost profits from the County based upon an implied right of action for the County's violation of section 260.247.
- (2) Haulers were entitled to damages for lost profits in the amount they would have charged to provide trash collection services directly to customers during the two-year waiting period, and Haulers did not have to prove that they had contracts with the customers they lost as a result of the County's violation of section 260.247 in order to recover damages.
- (3) It was permissible for Ficken's opinion as to Haulers' damages for lost profits to be based on Haulers' databases of customers and Haulers' profit and loss statements, i.e., facts and data he received from Haulers and of which he had no first-hand knowledge.
- (4) The County's argument, that the trial court's award of damages for lost profits is not supported by substantial evidence because Ficken's methodology in calculating Haulers' damages for lost profits was flawed, has no merit because, (a) Ficken explained his methodology and the rationale for which it was based, and the trial court generally accepted his methodology, which it was free to do; and (b) the County had the opportunity to introduce evidence or expert testimony which might have convinced the trial court that Ficken's opinion was wrong, but the County failed to do so.
- (5) The trial court's judgment awarding Haulers damages is supported by substantial evidence because Haulers established the fact of damages and the amount of damages with reasonable certainty.
- (6) The trial court's award of damages is not against the weight of the evidence.
- (7) The County's argument that Haulers failed to state a claim for which relief could be granted is barred by the law of the case.
- (8) The trial court did not err in finding Haulers' recovery for lost profit damages should not include damages for growth, rate increases, disposal fees, uncollectible accounts receivable, and layoff costs.
- (9) The trial court did not err in deducting Haulers' saved expenses in the categories of growth and rate increases.

(10) The trial court did not err in its calculation of damages.

Opinion by: Robert M. Clayton III, J.
Patricia L. Cohen, P.J. and Roy L. Richter, J., concur.

Attorney for Appellant: Patricia Redington

Attorneys for Respondent: Jane E. Dueker, Kimberly M. Steuterman

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