

\$101K Verdict For Breach Of Contract

Company Tortiously Interfered With Business Relationships

This case arose out of defendant Petro Environmental's fraudulent breach of a construction contract it had with plaintiff AKM and its subsequent tortious interference with AKM's business relationships.

Specifically, according to plaintiff's counsel, the parties to this action had entered into a contract pursuant to which AKM delivered soil to a Macomb County landfill where Petro was performing environmental clean-up services. In order to carry out its contractual obligations, AKM assembled a vast network of 11 independent truckers to deliver soil to the site without charge to AKM. Under the contract, Petro was required to pay AKM \$1 per cubic yard of soil delivered. Documents obtained in the case by AKM's attorneys showed that Petro was, in turn, being paid \$1.77 per cubic yard by AIG, the insurance carrier that was paying for the environmental clean-up costs.

In order to increase its profit margin from 77 cents per cubic yard to \$1.77 per cubic yard, just four months into the contract Petro fraudulently told AKM the project was complete and AKM's services were no longer needed. Then, when AKM left the job, Petro directly solicited all of the independent truckers — who had been previously delivering soil for AKM — to continue bringing soil to the site, thus cutting AKM out of the contract and interfering with AKM's business relationships.

In this regard, the arbitrator found: "a Petro representative had falsely informed AKM that the job was complete and no further material was needed at the Landfill.

AKM was therefore prevented from continuing performance under the Contract, and Petro continued to use AKM's suppliers without compensating AKM." (See, Op. ¶ 3.)

Plaintiff's counsel said AKM established these facts through the testimony of its own representatives, as well as on cross-examination through the admission of Petro's president, Mark Mather.

The key issue with respect to computing damages was resolving how much soil had been delivered to the site after AKM was cut out of the contract, as this would represent the measure of AKM's damages. Petro sought to rely on a comparison of pre- and post-job topographical surveys of the landfill, which showed that there was only a total of 98,741 cubic yards of soil delivered to the site before and after AKM was illegally terminated.

Based on this, Petro maintained a counter-claim alleging that AKM was actually paid too much for the job and that it was entitled to recoupment.

However, AKM argued, and the arbitrator agreed, that Petro's measurement was misleading and erroneous because it measured compacted (in-place) cubic yards of soil, which would naturally yield a much smaller unit count, and which was improper because, pursuant to the contract, the cubic units of soil were also to be references by truck count.

AKM argued that the "by truck count" language in the contract meant that AKM was entitled to be paid for "fluffed" (non-compacted) soil, and it supported its inter-

pretation of the contract with oral testimony adduced from Petro's own expert witness.

Accordingly, the arbitrator rejected Petro's counter-claim and found that AKM was entitled to recover all of its overhead and profit for an additional 90,000 cubic yards of soil that was found to have been delivered subsequently to Petro's fraudulent termination of AKM.

Ultimately, Macomb County Circuit Court Judge James Blemat confirmed the arbitration award and entered a final judgment against Petro in the amount of \$100,888.59. Plaintiff's counsel said Petro continued to resist payment to AKM, forcing AKM's attorneys to garnish the entire amount of the judgment from Petro's checking account at Huntington National Bank.

Type of action: Breach of construction contract; tortious interference

Type of injuries: Contract damages

Name of case: AKM Trucking, et al. v. Petro Environmental Technologies, Inc.
Court/case no./date: Macomb County Circuit Court, 2004-0791-CK; American Arbitration Association, 54-110-01347-02; June 22, 2004

Name of judge: James Blemat

Name of arbitrator: Peter Gustafson
Amount: \$100,889 judgment on arbitration award

Attorneys for the plaintiff: Gerard V. Mantese and Mark C. Rossman
Attorney for the defendant: Withheld
Name/city of most helpful experts: N/A
Insurance carrier(s): N/A