

Corporate & Financial Weekly Digest

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Start-Up Company Fails to Recover Profits

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A federal court in New York recently ruled that a start-up mineral water company had no recourse to the “wrongdoer rule,” which permits a complainant to recover damages in a breach of contract action even if the amount of damages is uncertain, because the company did not have sufficient proof that it suffered any damages at all.

Ho Myung Moolsan, Co. Ltd., a Korean-based seller of mineral water, sought \$133 million in lost profits based on an alleged breach of contract by supplier Manitou Mineral Water, Inc.. Before trial, Manitou sought to exclude Moolsan’s expert’s report, on which Moolsan’s claim for lost profits was based, because the report was predicated on speculation regarding Moolsan’s future earnings and did not reference any actual sales data. Moolsan argued that experts are permitted to rely on assumptions when reaching their conclusions and that under New York’s “wrongdoer rule,” Manitou—as the alleged breaching party—had the burden of refuting Moolsan’s estimated losses.

The U.S. District Court for the Southern District of New York excluded the report, holding that the report did not meet the demanding evidentiary requirements for new ventures seeking to recover lost profits. The court also held that the burden-shifting provisions of the “wrongdoer rule” did not apply. As the court noted, the “wrongdoer rule” only comes into play when the plaintiff has established the existence of damages, but the specific amount of those damages is uncertain. The rule was not applicable in this case because Moolsan was not merely unable to quantify its damages, but had not established with a high level of certainty that it had suffered any damages at all. (*Ho Myung Moolsan, Co. Ltd. v. Manitou Mineral Water, Inc.*, 2010 WL 4892646 (S.D.N.Y. Dec. 2, 2010))

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