

With Business Contracts, Lost Profits (Not Lost Revenues) are Proper Measure of Damages

In late June, the District Court of Appeal of Florida, Fourth District, reiterated that in a breach of contract case, lost revenue alone is typically an improper measure of damages, accordingn to a **report from Roetzel & Andress**.

Thomas P. Wert described the case: In *HCA Health Services of Florida, Inc. v. CyberKnife Center of the Treasure Coast, LLC*, 2016 WL 3540956 (Fla. 4th DCA, June 29, 2016), CyberKnife entered into a contract with a hospital. Under the contract, CyberKnife was to provide equipment and the site to the hospital for radiosurgery treatments to patients for five years. The hospital agreed to pay CyberKnife \$5,150 plus sales tax “per click” for each treatment. The contract also provided that “in no event shall either party be entitled to consequential or punitive damages.”

Less than a year after the contract went into effect, the hospital terminated the contract, citing federal regulations that would make “pay-per-click” agreements illegal beginning.

“Because CyberKnife failed to submit proof of lost profits at trial, it will collect nothing from the hospital even though the hospital terminated the contract almost two years before it actually could have under the contract,” Wert wrote.

Read the article.