

## Corporate & Financial Weekly Digest

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### Expert Opinion of Lost Profits Deemed Unreliable

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A beverage distributor was precluded from presenting an expert's assessment of its purportedly lost profits because the expert's conclusions regarding revenue forgone by the new business were not based on relevant data.

R&R International, Inc., a beverage distributor, accused Manzen, LLC, of breaching the distribution agreement they entered in 2008 and sought \$8.1 million in lost profits based on an expert's report. The expert, a former financial advisor with substantial experience in the beverage industry, had gathered information about R&R's potential earnings from industry contacts and estimated certain costs based on market averages. The defendants sought to exclude the expert's report as unreliable.

The U.S. District Court for the Southern District of Florida held that plaintiffs generally can recover profits lost by new businesses pursuant to the "yardstick" test, by which statistics from comparable businesses are used to estimate lost profits to "a reasonable certainty." The district court rejected R&R's expert's opinion, holding that a survey of the expert's contacts, which included results from distributors of alcoholic and non-alcoholic beverages, was not based on sufficiently comparable businesses because R&R distributed only non-alcoholic drinks. The expert's estimation of market costs was similarly unsupported by relevant data. The district court also found that other aspects of the expert's conclusions were unreliable and excluded the expert's assessment of R&R's lost profits. (*R&R Intern., Inc. v. Manzen, LLC*, 2010 WL 3605234 (S.D. Fla. Sept. 12, 2010))

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