

PHOENIX SERVICES
LIMITED PARTNERSHIP

Plaintiff

vs.

JOHNS HOPKINS HOSPITAL

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.: 24-C-03-001663
*

* * * * *

DECLARATORY JUDGMENT

For the reasons stated in the attached Memorandum Opinion, it is this 7th day of July, 2004 adjudged and declared that the rights and liabilities of the parties in this action are as follows:

Phoenix Services Limited Partnership (“Phoenix”) collects and disposes medical waste from Johns Hopkins Hospital (“JHH”) pursuant to a Waste Supply Agreement dated November 16, 1989 and First Amendment dated November 15, 1994 (referred to collectively as “the Agreement”);

On January 15, 2003, there was a Major Backup of waste at JHH because Phoenix failed to make more than three Complete Scheduled Pickups for which Sanctions were applicable. The failed scheduled pickups were the 4:00 p.m., 8:00 p.m., and 10:45 p.m. pickups on January 14th and the 7:00 a.m. and 12:30 p.m. pickups on January 15th;

The failure to make those pickups resulted in the backup of substantially more than 50 carts of bagged waste, excluding waste on the floor and waste brought to the dock during the cleanup. The failure to make the pickups was not caused by a force majeure;

Notice of a Major Backup was sent to Phoenix by JHH and received by Phoenix by 3:50 p.m. on January 15, 2003. Because there was an illegally parked truck that blocked access to the JHH dock until 5:20 p.m., Phoenix had until no later than 8:20 p.m. to arrive at JHH with sufficient tractors, trailers, equipment, and personnel to effect the prompt removal of the more than 50 carts of waste. Phoenix did not get sufficient tractors, trailers, equipment, and personnel to JHH by 8:20 p.m.;

JHH gave Phoenix a Notice of Suspension and, within 30 days of receipt of that Notice, Phoenix was required to provide JHH with reasonable assurances in the form of a certificate of the Independent Engineer stating that it had made changes to the Transportation System or the Facility sufficient to prevent the recurrence of a failure to comply with the agreed upon schedule of pickups;.

Phoenix provided a Certificate from the Independent Engineer within the 30 day period but the Certificate does not on its face give the required reasonable assurances;

Therefore, there was “an event of Default,” and JHH had the option of terminating the Agreement without penalty. JHH did terminate the Agreement on February 25, 2003 and that termination was valid and without penalty.

Costs to be paid by Phoenix and each party to pay their own attorney fees.

So ORDERED.

Judge Evelyn Omega Cannon