

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re: AWC LIQUIDATION CORP.,)	Chapter 11
)	
Debtor,)	Bankruptcy Case No. 96-1109 (PJW)
)	
IRON MOUNTAIN CORP.,)	
d/b/a "Multiskins International")	
)	
Appellant,)	
)	
v.)	C.A. No. 99-542 GMS
)	
AWC LIQUIDATION CORP.,)	
)	
Appellee)	
)	

ORDER

The debtor, AWC Liquidation Corporation ("AWC" or "the debtor"), filed for bankruptcy under Chapter 11 of the Bankruptcy Code on July 17, 1996 in the United States Bankruptcy Court for the District of Delaware. Prior to its bankruptcy, AWC was a producer and manufacturer of vinyl bandages. The appellant, Multiskins International ("Multiskins") was engaged in the business of selling multi-colored brown bandages to ethnic communities. Prior to AWC's bankruptcy, it had entered into various contracts with the appellant to provide brown vinyl for the ethnic bandages. According to Multiskins, over time AWC proved to be an unreliable manufacturer and supplier, at times sending the wrong bandages to Multiskins's customers, mislabeling the product, or placing the wrong bandages in the Multiskins boxes. Multiskins alleges that AWC's repeated failure to properly produce and ship the product eventually drove Multiskins, a promising new company, out of business.

On December 5, 1995, Multiskins sued AWC in the Superior Court of Connecticut.

Multiskins claimed that AWC's actions had breached numerous contracts which resulted in Multiskins' eventual demise. Multiskins sought consequential damages in the form of lost profits and incidental damages it claimed resulted from AWC's alleged breaches. Multiskins also asserted claims of negligent misrepresentation and claims under the Connecticut Unfair Trade Practices Act ("CUTPA"), CONN. GEN. STAT. 42-110b(a). After AWC's bankruptcy, the Connecticut action became subject to the automatic stay provisions of the Bankruptcy Code. On February 28, 1998, the parties signed a stipulation wherein they agreed to lift the stay regarding the Connecticut action and allow the case to proceed in Connecticut state court. The Bankruptcy Court, however, subsequently agreed to preside over and try the case.

A three day trial commenced on July 7, 1998. On June 19, 1999, the Bankruptcy Court issued an opinion wherein it declined to award Multiskins consequential damages. During the trial, the Bankruptcy Court's heard expert testimony on the subject adduced by both parties. After considering all of the evidence offered by Multiskins in support of its consequential damages claim, the Bankruptcy Court concluded that Multiskins' estimate of lost profits of two million dollars was unreliable. The court also refused to award any incidental damages, noting that although at least one of the debtor's damages claims might be considered incidental, the debtor had failed to demonstrate a connection between the alleged breach and the incidental damages sought. The Bankruptcy Court also found Multiskins' claims of negligent misrepresentation and unfair trade practices to be without merit. Thus, the Bankruptcy Court rejected Multiskins' claims in their entirety and declined to award any damages. Multiskins filed a timely notice of appeal on July 13, 1999.

Presently before the court is Multiskins' appeal of the bankruptcy court's decision. The brief on appeal assigns ten errors to the Bankruptcy Court, including: failure to apply the correct legal

standard for determining consequential damages, failure to correctly apply the Uniform Commercial Code (“UCC”), failure to award consequential damages, failure to award incidental damages, failure to correctly apply Connecticut law on negligent misrepresentation, failure to properly apply the CUTPA, failure to consider testimonial evidence regarding the alleged contracts, failure to admit documents received after the discovery period, failure to admit evidence of AWC’s inventory records, and the court’s independent investigation of matters outside the trial record.

After careful review of the record, the court agrees with the reasoning of the Bankruptcy Court and shall affirm its judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- a. Appellant’s Motion to Dismiss the Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8011 (D.I. 6) is DISMISSED as MOOT.
- b. The legal conclusions contained in the June 21, 1999 Memorandum Opinion of the Bankruptcy Court for the District of Delaware are AFFIRMED.
- c. The clerk shall close this case.

Dated: October 8, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE