

December 5, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-21206

HOUSTON NORTHWEST RADIOLOGY ASSOCIATION,
a Texas Professional Association,

Plaintiff-Appellant,

versus

PER SE TECHNOLOGIES, formerly known as Medaphis
Physician Services Corporation; PST SERVICES, INC.,
formerly known as Medaphis Physician Services Corporation,

Defendants-Appellees.

Appeal from the United States District Court for
the Southern District of Texas
(USDC No. H-00-CV-2849)

Before REAVLEY, JONES and CLEMENT, Circuit Judges.

PER CURIAM:*

The district court's summary judgment was predicated solely on the rejection
of an expert's opinion of the causal connection between PST's breach of contract

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

and HNRA's damages. While Shepherd's opinion about a minimum collection percentage may not support a judgment for certain dollars, it does have admissible weight to prove that HNRA was damaged because of the defendant's delay and failure to move to collection of the accounts. And it is delay that is the essence of this expert's testimony. With evidence of breach of contract that caused damages in the loss of some extent of collections, HNRA sufficiently resisted summary judgment.

Shepherd's testimony should not have been excluded. The court's ruling on reconsideration becomes moot.

The judgment is reversed. The cause is remanded for further proceedings.