STATE OF MICHIGAN

COURT OF APPEALS

RICHARD LEVINE and MELISSA LEVINE, d/b/a HART EMS MONROE, Plaintiffs-Appellants,	UNPUBLISHED July 29, 2010
v	No. 288844 Monroe Circuit Court
MONROE COUNTY EMERGENCY MEDICAL AUTHORITY and COUNTY OF MONROE, Defendants-Appellees.	LC No. 06-021923-CK

Before: GLEICHER, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Plaintiffs Richard and Melissa Levine appeal as of right from an order granting summary disposition in favor of defendants County of Monroe (Monroe County) and Monroe County Emergency Medical Authority (MCEMA). Because we determine that defendants have no *liability* under tort or contract law, we do not reach the issue of governmental immunity.[1] We affirm the trial court's learned opinion.

Plaintiffs ran Hart EMS Monroe (Hart EMS), a business that provided emergency medical services (EMS) in Monroe County.[2] The predecessor in interest to Hart EMS, Hart

[1] Were we to address the issue of governmental immunity, we would agree with Judge Gleicher's analysis of this issue in her concurring opinion. We note that the issue of governmental immunity as it relates to public contracts presents a unique issue. Although private entities can employ bad faith, misrepresentation, and fraud in the inducement as shields to a contract action, they are prohibited from employing the same concepts as a sword. In our opinion, this leads to an interesting exchange of ideas concerning these cases, especially when the public entity negotiated the contract in bad faith or misrepresented the essential terms and conditions of the contract, or as the cases cited in this opinion clearly indicate, intentionally failed to disclose pertinent information to the private entity. Although we find these concepts interesting and unique to public contracts, such a discussion is best left for another day.

[2] Richard and Melissa Levine are married. Although both had ownership of Hart EMS, Richard Levine was actively involved in the events described herein. Accordingly, we refer to Richard and Melissa Levine together as "plaintiffs" and to Richard Levine individually as "Levine."

Medical, Inc., (Hart Medical) entered into a contract to provide EMS services in Monroe County in November 2003. The MCEMA oversaw all emergency medical services in Monroe County except in the city of Monroe, which had its own EMS operation, and the organization had the authority to accept bids and enter contracts for the provision of EMS on behalf of Monroe County and its municipalities.

In 2001, defendants commissioned a study by the Ludwig Group, a consulting firm, to address the development of a comprehensive strategic plan to improve the provision of emergency services in Monroe County.[3] The study, known as the Ludwig Report, constituted an "audit" with respect to the delivery of emergency medical services in Monroe County and provided recommendations for "developing a comprehensive emergency services strategic plan and design for an emergency medical service delivery system for medical services, emergency services responses, training, and an effective communications system." As part of this study, the Ludwig Group compared the benefits of keeping American Medical Response (AMR) as the current EMS provider in Monroe County with developing a county-operated system.

The Ludwig Group acknowledged that the conclusions in its report were "recommendations" to ensure "that the Monroe County EMS system delivers the right level of care in the right amount of time" and noted that changes were "constantly occurring to the delivery of emergency services." It also noted that some of the factors it considered, especially available resources and population demographics, were constantly changing, requiring any EMS system to "constantly look inward and make corrections and modifications to constantly enhance the system."

The Ludwig Report highlighted several structural and organizational concerns with AMR related to its ability to provide cost-effective EMS services within the county. In particular, the report detailed serious financial problems that AMR and its parent company had faced in the years immediately preceding the compilation of the report. The Ludwig Group also explained that because AMR was privately owned, it could not access much of the company's financial data. However, it reported that one AMR manager, "[w]hen questioned about the financial solvency of the Monroe operation, . . . indicated they operated on about a four percent profit margin in the community." The Ludwig Group assumed that this four-percent profit margin exclusively concerned AMR's profit margin from the Monroe County contract. The report also indicated that new Medicare regulations and changing reimbursement rates between 2002 and

[3] At the time, the emergency services system in Monroe County consisted of a public/private partnership between American Medical Response (AMR), a for-profit commercial ambulance provider, and career, volunteer, and combination career/volunteer firefighters throughout the county. AMR was contractually obligated to provide four ambulances, while 21 other ambulances were housed in various fire departments within the county. Firefighters often provided first responder services during medical emergencies, while AMR would provide more advanced paramedic services and hospital transport during medical emergencies. The county did not fund the system; instead, funding came from the fire departments, Mercy Memorial Hospital (the hospital serving Monroe County), and AMR.

2006 would likely impact AMR's financial solvency in the county, although the report did not detail whether the impact would be positive or negative.

The report also noted that each AMR vehicle received 4.6 calls per day and explained that this low call ratio "would generally indicate that AMR has vehicles available at all times for calls."[4] The report mentioned that AMR's four ambulances were primarily based in the center part of the county, not in more rapidly growing areas in the northern and southern parts of the county. Further, AMR had a 60 percent transport rate, which it considered high for a rural county and at a level typically seen in urban areas with lower social-economic individuals. The report repeated concerns from firefighters and first responders that at times, AMR would not arrive at an emergency scene in a timely manner and the first responders would be forced to transport a patient to the hospital in a first-responder vehicle. This was particularly common at emergency scenes in the northern and southern parts of the county. The report discussed possible reasons for these reports of long response times, mentioning the placement of base station locations, the comparative lack of major east-west highways in the county, personnel discouraging individuals from going to the hospital, a significantly high number of false alarms in the community, or the fact that patients had already been transported by the fire department because of AMR's prolonged response time. However, because of limitations on the type of data collected by Monroe County, the Ludwig Group admitted that it could not draw firm conclusions regarding the reasons for AMR's slow response times.

The Ludwig Group relied on data from 1997 through 2000 and used a linear regression model to determine future EMS demand, predicted an average annual increase in the future call load of approximately 800 calls, and estimated that the EMS system would "possibly reach 10,000 EMS runs by 2004." The report noted that this prediction was based on the assumption that the rate of growth in demand would remain consistent, and emphasized that "EMS demand is most correlated with the population and median income of the community served." The report stated,

> In general, EMS demand is directly proportional to population (the more people, the more calls) and inversely proportional to median income (low income households tend to be higher users of EMS for a variety of reasons). There are

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[4] The Ludwig Group explained that AMR has four ambulances available for Monroe County at all times. Between July 1, 2000, and June 30, 2001, AMR responded to 6,771 calls, each taking an average of one hour to complete. Using this data, it then calculated the unit-hour utilization for each ambulance by dividing the number of EMS runs (6,771) by the product of the number of ambulances in the county (4) multiplied by the number of hours in a year (8,760). The unit-hour utilization number that it calculated, 0.19, represents "the ratio of the number of unit-hours spent delivering EMS to the total number of unit-hours that the system could possibly deliver." Although the Ludwig Group admitted that the standard for effective use of EMS resources varied from community to community, it also noted that the unit-hour utilization ratio was low, and possibly indicated an inefficient use of resources. The report stated, "By some standards, an UH:U less than 0.30 means that transport resources are not being used efficiently, while UH:U in excess of 0.40 is over-utilization."

> many other factors that influence demand, too, such as the self-reliance of the population (i.e. take care of themselves or taking themselves to the hospital). EMS demand is also subject to external occurrences (exogenous factors) that cannot be anticipated or controlled, such as heat waves, snow emergencies, etc.

The Ludwig Group concluded with a series of recommendations. In particular, it recommended revising the centralized radio communication system that AMR used to dispatch its units, opining that having Monroe County Central Dispatch dispatch the AMR ambulances directly and at the same time as the fire department, would decrease response times. The report also recommended increasing the number of ambulances operated by the county EMS provider to at least seven advanced life support (ALS) ambulances during peak periods and five ALS ambulances during non-peak periods. Finally, the report outlined the benefits and costs of keeping AMR as an ambulance provider as opposed to having the county or local fire departments provide ALS service. It opined that if the county chose to renew its contract with AMR, it would probably need to provide a subsidy to AMR in order to increase AMR resources. Alternatively, the county could open the contract to competitive bids from both AMR and other licensed private ambulance services. Although the report anticipated that "based upon like communities and recommended deployment of seven ambulances, it is anticipated the additional subsidy . . . will range from $150,000 - $375,000," it also noted that the competitive bidding process would possibly lower the amount of any subsidy that might need to be paid. Further, the report noted,

> well-managed, efficiently run systems can survive with minimal subsidization. Subsidy, when it occurs, is most often required by political and practical considerations such as the need to serve remote locations or locations with poor payer mixes. Specifically, experience has shown that a minimum population base of 250,000 is necessary in order for an ambulance service to be self-sufficient. Systems serving populations less than that will be required to provide some sort of external funding in addition to the amount recouped through reimbursement.

The Monroe County Board of Commissioners (the board) received the Ludwig Report in May 2002. The deputy clerk for the board kept the original report and would provide a copy free of charge to anyone who requested it. The report initiated a fair amount of debate among members of the board and the MCEMA, as local officials studied the report and discussed points of agreement and disagreement.

By 2003, the MCEMA had decided to solicit bids for the provision of ambulance services in the county.[5] In the spring of 2003, the MCEMA released a request for proposed bids (RFP)

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[5] The EMS contract in question was not a traditional bid in the sense that the county was seeking a provider who would provide ambulance service in exchange for a fee. Instead, the county was requesting proposals from private ambulance companies to be given an exclusive right to provide ambulance service for the county. Instead of being paid by the county for providing this service, the ambulance service would profit by collecting fees for the ambulance runs it provided in the county. Regardless, Monroe County's process for selecting a service provider is similar to a
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for the county EMS contract. AMR and another EMS provider submitted bids.[6] However, neither bid was consistent with the criteria set forth in the RFP, so the MCEMA decided to reject both bids for nonconformance and reopen the bidding process. During the meeting at which this was decided, a MCEMA committee member recommended amending the RFP to only require the provision of six ALS units instead of seven, while also requiring that an equal number of units be placed north and south of the River Raisin. The MCEMA agreed and amended the RFP to only require that a provider have six fully staffed ambulance units available around the clock, with an additional two units available on a backup basis. After this meeting, the MCEMA again invited bids and proposals from private-sector vendors.

At this time, Adam Gottlieb, the CEO and only shareholder of Hart Medical, learned about the RFP. In 2003, Hart Medical primarily provided ambulance services at special events; apparently the company had never taken on a municipal contract as extensive as that proposed in the RFP. Gottlieb decided to bid on the contract, but realized that he would need to obtain financing to expand into Monroe County. At the time, Levine was working for Hart Medical as a paramedic; Gottlieb asked Levine to become a stockholder and co-owner of the company in exchange for providing capital to Hart Medical.

Gottlieb and Levine relied on Richard Schaffner, the Hart Medical operations manager, to prepare the bid proposal.[7] Levine was not heavily involved in preparing the bid proposal and did not know what information the county provided in the RFP. Gottlieb and Schaffner took responsibility for preparing their proposal, submitting the bid, and later, negotiating toward a final contract.[8]

The MCEMA selected Hart Medical's bid to provide ambulance and life support services in Monroe County,[9] and on November 7, 2003, the MCEMA and Hart Medical entered into a three-year contract.[10] The contract specified that Hart Medical would have six ALS units available at all times and have another two units available as backup, in the manner set forth in the RFP. Hart Medical was scheduled to begin providing services in Monroe County on January 1, 2004.

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traditional bidding process for a public-works contract, and the parties refer to the process in question as a bidding process and the request submitted by plaintiffs as a "bid." We shall do the same.

[6] The RFP was not included in the lower court record, and we do not know what information was disclosed in it. It appears, however, that the RFP reflected the county's decision to require the centralization of all emergency communications and to increase the number of ALS ambulances within the county.

[7] Schaffner had never worked up a bid proposal for a contract with a municipality or other unit of government before.

[8] Levine said that he "looked over" the figures on the bid proposal, but he did not verify that the figures were correct.

[9] The parties never provided copies of Hart Medical's bid, and it was not included in the lower court record.

[10] Gottlieb signed the contract on behalf of Hart Medical.

Gottlieb and Levine never formalized in writing their agreement transferring partial ownership of Hart Medical to Levine. After Hart Medical began service pursuant to the Monroe County contract, the business began to struggle. Levine continued loaning Hart Medical significant amounts of money, totaling over $800,000. The relationship between Levine and Gottlieb soured, and on September 30, 2004, Gottlieb and plaintiffs entered into an agreement to sever their business relationship and divide Hart Medical. Plaintiffs received control over the portion of the business located in Monroe County, taking on both the debts and assets associated with the Monroe County operation, while Gottlieb received the portion of the business outside Monroe County. Levine renamed the Monroe County business "Hart EMS Monroe, PLLC" (Hart EMS). Hart EMS continued to lose money, and by March 2005, Levine gave up the Monroe County contract and ended the business.

Although Levine admitted that he heard "rumors" of the Ludwig Report before Hart EMS closed, he first acquired a copy of the report in April 2005.[11] Levine claimed that his failed experiences executing the Monroe County contract corresponded with the predictions set forth in the report, that he would have needed a subsidy in order for Hart EMS to survive, and if he had seen this report at the time Gottlieb and Schaffner were preparing the bid, he would have recommended that they not bid on the contract and he would have not invested in the company. Gottlieb and Schaffner also admitted that they had not been aware of the report when they placed their bid, but had they been aware of the report and the information provided therein, they would have seriously discussed whether to place a bid and, if placing a bid, they would have asked for a subsidy and other concessions.[12]

On appeal, plaintiffs claim that defendants had a common law duty to disclose the Ludwig Report to representatives of Hart Medical before the company placed a bid for the Monroe County EMS contract. Plaintiffs argue that the trial court erred when it concluded that defendants had no duty to disclose the report to them. We disagree, finding instead that the trial court did not err when it granted defendants' motion for summary disposition. We review a trial court's grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

To describe what they mean by a "common law duty," plaintiffs quote *Buczkowski v McKay*, 441 Mich 96, 100-101; 490 NW2d 330 (1992), which states,

> Duty is actually a "'question of whether the defendant is under any obligation for the benefit of the particular plaintiff' and concerns 'the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other.'" *Friedman v Dozorc*, 412 Mich 1, 22; 312 NW2d 585 (1981); Prosser & Keeton, Torts (5th ed), § 53, p 356. "'Duty' is not sacrosanct in itself, but is

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[11] Levine never formally requested a copy of the Ludwig Report from the county until after he gave up the Monroe County contract.

[12] Neither Gottlieb nor Schaffner read the entire report. Schaffner read selections of the report and conveyed the information to Gottlieb.

> only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." *Id.*, p 358. See also *Friedman v Dozorc*, *supra*, and *Antcliff v State Employees Credit Union*, 414 Mich 624, 631; 327 NW2d 814 (1982).

In *Valcaniant v Detroit Edison Co*, 470 Mich 82, 86; 679 NW2d 689 (2004), our Supreme Court noted,

> In determining whether a legal duty exists, courts examine a variety of factors, including "foreseeability of the harm, degree of certainty of injury, closeness of connection between the conduct and injury, moral blame attached to the conduct, policy of preventing future harm, and . . . the burdens and consequences of imposing a duty and the resulting liability for breach." *Buczkowski*[, *supra* at 101 n 4] (citing Prosser & Keaton, Torts [5th ed], § 53, p 359 n 24).

The foreseeability of harm, alone, does not automatically mean that one party owes a legal duty to another; instead, all the applicable factors must be considered, *Buczkowski*, *supra* at 101; *Samson v Saginaw Professional Bldg, Inc*, 393 Mich 393, 406; 224 NW2d 843 (1975), and a balancing test employed, see *Rodriguez v Detroit Sportsmen's Congress*, 159 Mich App 265, 271; 406 NW2d 207 (1987) ("[T]he determination of whether a duty should be recognized in any individual case is based on a balancing of the societal interest involved, the severity of the risk, the burden upon the defendant, the likelihood of occurrence and the relationship between the parties.").

Before applying the standard described in *Buczkowski* to determine whether a common law duty existed in this case, we note that the controlling case law concerning the duty to disclose information to bidders for a contract does *not* require disclosure of the type of information included in the Ludwig Report.[13] A government organization or other entity requesting bids on a contract has some duty to release pertinent information in its possession that would not otherwise be available to those submitting bids on the contract. However, the controlling Supreme Court authorities establishing this rule all concern the disclosure of soil conditions not otherwise known to contractors bidding on public works projects.

In *Hersey Gravel Co v State Hwy Dep't*, 305 Mich 333, 335-336; 9 NW2d 567 (1943), the plaintiff contractor claimed that the Michigan State Highway Department failed to include information in its possession regarding soil conditions at the construction site that was more detailed than the information provided in the blueprints that it released to those submitting bids on a highway contract. The *Hersey* Court affirmed the trial court's determination that a duty to disclose existed, indicating that under the circumstances present in this case, the bidder could rely on the department's representations in the blueprints regarding the nature of the soil

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[13] Again, this case concerns the solicitation of proposals to provide ambulance service within the county, not the solicitation of a bid per se. However, because this process is analogous to a bidding process, we will look to relevant cases concerning disclosure requirements during the solicitation of bids for public works projects for guidance.

conditions and that the department had an obligation to make a full disclosure of the results of tests of soil conditions at the site. *Id.* at 340-341.

In *W H Knapp Co v State Hwy Dep't*, 311 Mich 186, 188; 18 NW2d 421 (1945), the plaintiff building company claimed that the state did not fully disclose the nature of soil conditions at the worksite in the specifications set forth for bids on a public works contract, requiring the company to spend more time and resources excavating the soil than it had anticipated when it bid on the contract. The *Knapp* Court held that the state had a duty to "set forth in the specifications descriptive language which would not mislead a bidder" regarding the type of soil present at the worksite. *Id.* at 199.

Finally, in *Valentini v City of Adrian*, 347 Mich 530, 531; 79 NW2d 885 (1956), the plaintiff sewer contractor claimed that the defendant municipality knew that quicksand and excessive water were present in the construction areas but failed to disclose this information during the bid process for a sewer construction contract. As a result, plaintiff submitted a bid that was too low and, after the bid was accepted and he began work on the project, he discovered the difficult soil conditions and experienced delays and cost overruns in constructing the sewer. *Id.* The *Valentini* Court concluded that "[t]he withholding by the city of its knowledge of the known conditions, resulting in excessive cost of construction, forms an actionable basis for plaintiff's claim for damages." *Id.* at 534.

These cases establish that a public entity soliciting bids on a contract has a duty to disclose soil conditions not otherwise known to contractors bidding on public works projects. This Court has extended this requirement to include disclosure of other permanent conditions known to the public entity. In *Earl L Reamer Co v City of Swartz Creek*, 76 Mich App 227, 235; 256 NW2d 447 (1977), this Court determined that the city of Swartz Creek breached its duty to disclose by failing to provide a sewer contractor information that it possessed concerning the existence of underground structures before the contractor placed a bid on a sewer project.[14]

Cases from both the Eastern and Western Districts of Michigan have addressed the extent to which *Hersey*, *Knapp*, *Valentini*, and *Reamer* require disclosure. In *Performance Abatement Services, Inc v Lansing Bd of Water & Light*, 168 F Supp 2d 720, 724, 729 (WD Mich, 2001), the plaintiff contractor claimed that defendant, a public utility, failed to disclose drawings and other information detailing the full extent to which asbestos was present in a power plant that it had a contract to remodel. Judge Enslen determined that a duty to disclose existed, explaining,

> [*Hersey*, *Knapp*, *Valentini*, and *Reamer*] require as part of Michigan law that a party which submits a project for bids has a legal duty to inform bidders of the nature and scope of work to be performed by giving bidders all relevant information on the project in its possession. Failure to comply with this duty has been treated as a breach of contract or implied warranty. Furthermore, the above cases do not permit a city or its contractor to circumvent the implied duty by

[14] Because *Reamer* was issued before November 1, 1990, it is not binding on this Court. MCR 7.215(J)(1).

> contract language requiring the bidder to make its own inspections, requiring the bidder to assume the risk of non-discovery, or disclaiming the accuracy of the information. [*Id.* at 734 (internal citations omitted).]

However, in *Hunt Constr Group, Inc v Constr Services, Inc*, 375 F Supp 2d 612, 619 (ED Mich 2005), Judge Gadola disagreed with the broad conclusion set forth in *Performance Abatement Services*. Instead, he concluded that *Hersey*, *Knapp*, *Valentini*, and *Reamer* were distinguishable, noting that, among other reasons, the controlling Michigan cases "involve natural conditions such as soil quality."[15] *Id.* at 619.

Obviously, neither *Performance Abatement Services* nor *Hunt* is binding on this Court. However, they illustrate a conflict in opinion regarding the extent to which the holdings in *Hersey*, *Knapp*, *Valentini*, and *Reamer* should be expanded to implement a duty to disclose in other scenarios. We conclude, though, that Judge Gadola correctly determined that the reading of the relevant Michigan case law in *Performance Abatement Services* was overly broad. The controlling law does not require a party to disclose "all relevant information on the project in its possession" without qualification. Instead, as Judge Gadola aptly observed, the controlling Michigan authorities only require disclosure of "natural conditions" that are unchanging. Accordingly, the nature of the information in question must be considered when determining whether the controlling Michigan case law would require disclosure of information in a particular circumstance.

The undisclosed information at issue in the relevant Michigan cases was objective and unchanging in nature. The plaintiffs in these cases were not seeking the disclosure of projections, opinions, or statistics that would change with time. Instead, they sought information concerning soil conditions or the presence of underground structures. Such information is, for all practical purposes, static, and realistically there would be no chance of it changing between the time of the information's compilation and release. Conversely, the information that plaintiffs claim should have been released in this case is *not* static.

The Ludwig Report was not simply a compilation of unchanging data and other information that would remain fixed indefinitely. To the contrary, the Ludwig Group, in compiling its study, emphasized that its recommendations were based largely on factors that were in "constant flux." Much of the information on which the Ludwig Group relied in making its recommendations, including population distribution and demographics, was constantly changing and, as such, would decrease the usefulness of the Ludwig Report over time. Accordingly, any duty to disclose information of a changing nature, such as that permeating the Ludwig Report, is not the equivalent of a duty to disclose information that is, for all practical purposes, static. We are not suggesting that the changing nature of information automatically

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[15] In *Hunt*, a subcontractor who had entered into a contract with the general contractor to provide metalwork at Detroit Metropolitan Airport claimed that the contractor had "superior knowledge" of the project that it did not disclose. *Id.* at 614, 617. The opinion does not indicate the nature of this "superior knowledge," although it indicates that defendant claimed that it lacked "plans and information when it entered into the subcontract." *Id.* at 619.

precludes *any* duty to disclose it. Instead, we simply conclude that the holdings in *Heresy*, *Knapp*, *Valentini*, and *Reamer* should not be read to automatically require disclosure of information of a changing nature, even if a plaintiff claims that such information is somehow relevant.

Instead, in *Buczkowski*, our Supreme Court sets forth the proper test to apply to determine whether defendants had a legal duty to disclose the Ludwig Report. As discussed earlier, this test requires weighing several factors, including (1) the foreseeability of harm, (2) the degree of certainty of injury, (3) the closeness of the connection between the conduct and injury, (4) the moral blame attached to the conduct, (5) a policy of preventing future harm, and (6) the burdens and consequences of imposing a duty and the resulting liability for the breach. See *Valcaniant*, *supra* at 86.

Plaintiffs argue that the trial court erred when it held that defendants had no duty to disclose the Ludwig Report, instead mischaracterizing the expert nature of the Ludwig Group's report and recommendations as just "another person's opinion." According to plaintiffs, the trial court incorrectly determined that plaintiffs could have simply conducted their own study and discovered the same information as that found in the report because the report contained certain information that would otherwise be unavailable to plaintiffs.

Plaintiffs acknowledge that a substantial amount of information included in the Ludwig Report is not relevant and, therefore, not subject to a duty to disclose.[16] Instead, it appears that they are simply arguing that defendants had the duty to disclose that the Ludwig Report said that (1) AMR had a four percent profit margin while contracted to provide only four ambulances, (2) trends indicated an increase of 800 runs each year, (3) AMR had a 40 percent non-transport rate, and (4) an ambulance services provider would need a subsidy of between $150,000 and $375,000 to be profitable.[17]

Admittedly, requiring defendants to disclose a copy of the Ludwig Report would not have been burdensome on them; disclosure would require nothing more than making copies of the report and including them with the RFPs provided to bidders. However, we believe that, on balance, the evidence presented does not establish that defendants had a duty to disclose this information.

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[16] For example, the Ludwig Report discussed, in great detail, the creation of a hazardous material incident response team in the county and the purchase of a mobile command vehicle by the county. There is little indication that the such information would be relevant to bidders preparing to submit bids for an EMS contract with the county, and plaintiffs do not suggest that defendants had an independent duty to release such information.

[17] We note that defendants received a copy of the Ludwig Report over a year before they began soliciting bids for the EMS contract, and the report itself contained data that would have been two to three years old at the time the RFPs were released. Again, no copy of the RFP is included in the lower court record, and the parties do not otherwise discuss what information was actually provided to bidders in the RFP. However, there does not appear to be a dispute regarding plaintiffs' claim that the information in question was not otherwise provided in the RFP.

Plaintiffs first claim that they were harmed because when Hart Medical bid on the contract, it did not have access to otherwise unavailable information found in the Ludwig Report indicating that AMR only had a four percent profit margin. However, this comment was probably made in 2001, when the Ludwig Group was compiling information for its report. Plaintiffs fail to explain how a comment by one manager about the profitability of AMR's EMS operation in 2001 would indicate that Hart Medical's EMS operation would be unprofitable in 2004 and 2005.[18] Further, the Ludwig Report discussed, in great detail, problems with AMR's management and organizational structure that could have affected its profitability in the county, but which would not necessarily have been a factor in Hart Medical's operations. For example, the Ludwig Report indicated that AMR's profitability was negatively affected by its long response times and low transport rates. This, in turn, was caused in part by AMR's centralized call structure, in which a local dispatcher would need to contact AMR's dispatch unit to dispatch an AMR ambulance, creating an extra step in the process. One reason for AMR's low transport rate was its failure to arrive at the emergency scene in a timely fashion, resulting in some situations in which a fire department's first responder vehicle would instead be used to transport a patient to the hospital.

Further, other demographic changes within the county, including changing population distributions and fluctuating socio-economic demographics, reduce the reliability of profitability statistics from years before. Although plaintiffs claim that they were harmed by a failure to disclose AMR's profitability, they fail to explain how it would have been foreseeable to defendants that Hart Medical would have been harmed by not having two-year old data concerning the profitability of AMR when this information was, in part, a reflection of structural problems within AMR and was based on a different number and placement of ambulances than called for in the RFP. Similarly, plaintiffs identify little connection between defendants' failure to provide this information and the resulting unprofitability of Hart Medical/Hart EMS.

Similarly, the evidence presented does not establish that defendants had a legal duty to disclose that AMR had a 40 percent non-transport rate. As with the information concerning AMR's profitability, this statistic was based on data that was at least two years old at the time Hart Medical bid on the RFP. The Ludwig Group emphasized in its report that the non-transport rate would vary from year to year, and it noted factors specific to AMR, such as reports of slow response times in some circumstances, that would affect its non-transport rate. Again, plaintiffs do not explain how defendants' failure to disclose a non-transport rate based on data that was at least two years old at the time Hart Medical presented its bid caused the company to be unprofitable in 2004 and 2005. Further, it would not have been foreseeable that defendants' failure to provide this statistic in 2003 would have resulted in the failure of Hart Medical/Hart EMS when the Ludwig Report indicated that this low transport rate was due, in part, to problems within AMR and its Monroe County operation.

[18] Further, plaintiffs provide no evidence to indicate whether a four percent profit is good or bad in the industry.

The evidence presented also does not establish that defendants had a duty to disclose the trend increase of 800 runs annually predicted in the Ludwig Report. This rate increase was calculated using data compiled between 1997 and 2000, and it would have been of increasingly marginal usefulness in subsequent years. The report acknowledged that the prediction was based upon the assumption that the rate of increase in call volume would remain consistent in subsequent years, but in the absence of any indication that call volumes rose between 2000 and 2003 at the same rate as between 1997 and 2000, there is little indication that defendants would have still found this prediction to be useful in 2003 or that they could have contemplated that any failure to disclose this data would have so deceived Hart Medical that it unknowingly entered into an unprofitable contract.[19]

Finally, defendants had no duty to disclose the conclusion made in the Ludwig Report that the county should provide an annual subsidy of between $150,000 and $375,000 to AMR if it decided to keep AMR as its EMS provider in the county. First, this conclusion is nothing more than an opinion by the Ludwig Group regarding the estimated financial subsidy that AMR or another provider would need to increase ambulance deployment in the county, and the Ludwig Group indicated that the need for a subsidy would depend on the nature of the bids received for the EMS contract. Also, the extent to which AMR would need a subsidy to overcome deficiencies in its internal structure and operation that another provider would not face is unclear. Further, this opinion is based on the assumption that seven ambulances would be deployed at all times for service to the county, and not based on the "six full-time, two backup" deployment arrangement called for in the RFP. We do not see how defendants could predict that plaintiffs would be harmed by defendants' failure to mention that the Ludwig Group recommended that defendants consider providing a subsidy to an ambulance service provider under different circumstances than those required in the RFP. Further, considering that Levine, Gottlieb, and Schaffner were in the best position to determine whether Hart Medical's resources and operational structure would permit the company to provide EMS service in Monroe County without receiving a subsidy, and considering that Levine, Gottlieb, and Schaffner were not prohibited from requesting a subsidy from the county in the bid, we do not believe that there is a particularly close connection between any failure to disclose this recommendation and the subsequent failure of Hart Medical/Hart EMS.

In addition, plaintiffs do not explain why they could not have conducted their own study to acquire the aforementioned statistics and related information (except to imply that it would have cost too much), nor do they indicate why any of this information was otherwise unavailable to them. Plaintiffs also do not explain why they, Gottlieb, or Schaffner would have been unable to acquire information that the Ludwig Group was able to acquire. It is difficult for us to assign much moral blame to defendants for any failure to disclose this information in light of the fact that the Ludwig Report was publicly available and in the absence of any indication (besides plaintiffs' self-serving assertions) that plaintiffs, Gottlieb, or Schaffner would not have been able to acquire this information without much trouble if they had simply thought to ask for it.

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[19] Plaintiffs do not provide data indicating whether the actual number of runs they conducted in 2004 reached 10,000 runs, as predicted in the report.

Accordingly, defendants did not have a legal duty to disclose the Ludwig Report or the "otherwise unavailable information" contained therein. It was not foreseeable that Hart Medical would present an unprofitable bid and, as Hart EMS, eventually be forced to give up the Monroe County contract and disband because it did not have access to a few two-year-old statistics. Further, considering the wealth of information and research that is needed to craft a bid that is economically strategic, fiscally sound, feasible, and competitive, it is difficult for us to believe that any failure by defendants to release a few outdated statistics and a marginally relevant recommendation was so significant as to cause the downfall of plaintiffs' business. Accordingly, the trial court's decision to grant defendants' motion for summary disposition was not erroneous.

Plaintiffs also argue that defendants "breached their duty to maintain fundamental fairness in the competitive bid process" by disclosing the Ludwig Report to AMR, but not to Hart Medical. The trial court did not address this issue in its ruling in this case. However, because the information contained in the Ludwig Report was at least two years old and of marginal relevance, we do not believe that the "fundamental fairness of the competitive bid process" was intrinsically undermined because plaintiffs, Gottlieb, and Schaffner were not aware of the report at the time Hart Medical made its bid. Regardless, there is no evidence in the lower court record that defendants provided the Ludwig Report to some bidders, but not others, during the bidding process, nor is there evidence of any attempt to deliberately prevent representatives of Hart Medical from receiving a copy. To the contrary, the evidence presented indicates that anyone could request a copy of the report at no charge.

Further, plaintiffs do not present any case law supporting their apparent contention that the mere fact that one bidder for a contract has publicly available information that another bidder does not have constitutes a breach of a "duty to maintain fundamental fairness" in the bidding process by the party requesting bids. A party requesting bids for a contract should not be punished because one bidder, on its own initiative, acquires publicly available information that another bidder does not have. The cases that plaintiffs claim support their argument involve circumstances in which the bidding process itself was obstructed. There is no evidence suggesting that such circumstances are present in this case, and we do not find the authority that plaintiffs cite applicable or persuasive.

It is unfortunate that plaintiffs suffered such significant financial turmoil as a result of their investment in Hart Medical/Hart EMS. As difficult as plaintiffs' circumstances are, and as much as we sympathize with their plight, plaintiffs' financial losses are nothing more than the result of a series of bad business decisions. This Court is not commissioned to remedy every bad business decision that a company or individual makes.

Finally, because the trial court did not err when it granted summary disposition to defendants, we need not address whether governmental immunity or the presence of an arbitration agreement in the November 2003 contract bar plaintiffs' claims. We also need not address plaintiffs' claims that the MCEMA was acting as an agent of Monroe County when it entered into the contract with Hart Medical and is an appropriate party to this case.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder