

12-12-2012

DeGroot v. Standley Trenching, Inc. Clerk's Record v. 1 Dckt. 39406

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"DeGroot v. Standley Trenching, Inc. Clerk's Record v. 1 Dckt. 39406" (2012). *Idaho Supreme Court Records & Briefs*. 4423.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4423

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

Vol. 1 of 13

(VOLUME 1)
IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

LAW CLERK

**CHARLES JAY DE GROOT and
DE GROOT FARMS, LLC.,**

**Plaintiffs-Counterdefendants-
Appellants,**

-vs-

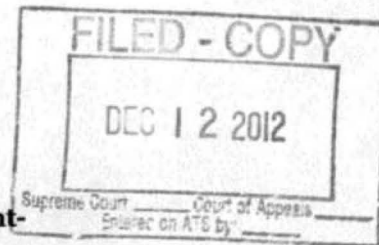
**STANDLEY TRENCHING, INC.,
d/b/a STANDLEY & CO.,**

**Defendant-Counterclaimant-
Respondent,**

and

**J. HOULE & FILS, INC., a
Canadian corporation,**

Defendant-Respondent.



**Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County**

Honorable GREGORY M. CULET, District Judge

**Kevin E. Dinius and Michael J. Hanby II
DINIUS LAW**

Attorneys for Appellants

**M. Michael Sasser
SASSER & INGLIS, PC**

SEE AUGMENTATION RECORD

**Robert D. Lewis
CANTRILL SKINNER SULLIVAN & KING LLP**

Attorneys for Respondents

39406

IN THE SUPREME COURT OF THE
STATE OF IDAHO

CHARLES JAY DE GROOT and)
DE GROOT FARMS, LLC.,)

Plaintiffs-Counterdefendants-)
Appellants,)

-vs-)

STANDLEY TRENCHING, INC.,)
d/b/a STANDLEY & CO.,)

Defendant-Counterclaimant-)
Respondent,)

And)

J. HOULE & FILS, INC., a)
Canadian corporation,)

Defendant-Respondent.)

Supreme Court No. 39406-2011

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE GREGORY M. CULET, Presiding

Kevin E. Dinius and Michael J. Hanby II, DINIUS LAW

Attorneys for Appellants

M. Michael Sasser, SASSER & INGLIS, PC.

Robert D. Lewis, CANTRILL SKINNER SULLIVAN & KING LLP.

Attorneys for Respondents

TABLE OF CONTENTS

	Page No.	Vol. No.
Register of Actions	2 – 22	1
Complaint and Demand for Jury Trial, filed 9-12-01	23 – 32	1
First Amended Complaint and Demand for Jury Trial, filed 12-21-01	33 – 46	1
Verified Answer and Counterclaim, filed 2-22-02	47 – 52	1
Answer to Defendants' Counterclaim, filed 3-11-02	53 – 57	1
Answer and Demand for Jury Trial, filed 5-2-02	58 – 64	1
Second Amended Complaint and Demand for Jury Trial, filed 5-2-03	65 – 76	1
Answer to Second Amended Complaint and Counter Claim, Filed 5-13-03	77 – 82	1
Motion for Summary Judgment on Counterclaim, filed 1-31-05	83 – 85	1
Memorandum in Support of Motion for Summary Judgment on Counterclaim, filed 1-31-05	86 – 91	1
Affidavit of Robert D. Lewis, filed 1-31-05	92 – 106	1
Affidavit of Kurt Standley, filed 1-31-05	107 – 110	1
Defendant Standley Trenching Inc's Motion for Summary Judgment, filed 1-31-05	111 – 113	1
Defendants Standley Trenching Inc's Memorandum in Support of Motion for Summary Judgment, filed 1-31-05	114 – 136	1
Affidavit of Michael E. Kelly in Support of Defendant Standley Trenching Inc's Motion for Summary Judgment, filed 1-31-05	137 – 179	1
Plaintiffs' Memorandum in Opposition to Defendant Standley Trenching Motion for Summary Judgment on the Second Amended Complaint and Counterclaim, filed 2-15-05	180 – 201	1
Affidavit of Kevin E Dinius in Support of Memorandum in Opposition to Defendant Standley Trenching Inc Motion for Summary Judgment on Complaint and Counterclaim, Filed 2-15-05	202 – 349	2
Defendants Standley Trenching Inc's Reply Memorandum on Motion for Summary Judgment, filed 2-22-05	350 – 373	2

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Order Granting Defendant's Motion for Summary Judgment, Filed 3-22-05	374 – 376	2
Order Confirming Summary Judgment, filed 3-28-05	377 – 379	2
Judgment on Counterclaim, filed 4-4-05	380 – 382	2
Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of the Case, filed 8-18-05	383 – 388	2
Third Party Defendant Standley's Motion for Summary Judgment, Filed 2-21-07	389 – 391	2
Third Party Defendant Standley's Memorandum in Support of Motion for Summary Judgment, filed 2-21-07	392 – 415	3
Affidavit of Counsel in Support of Third Party Defendant Standleys Motion for Summary Judgment, filed 2-21-07	416 – 450	3
Affidavit of Jill S Holinka in Support of Memorandum in Opposition To Third Party Defendants Motion for Summary Judgment, Filed 3-7-07	451 – 482	3
Memorandum in Opposition to Third Party Defendants Motion for Summary Judgment, filed 3-7-07	483 – 499	3
Third Party Defendant Standleys Reply Memorandum in Support of Motion for Summary Judgment, filed 3-14-07	500 – 512	3
Affidavit of Counsel in Support of Third Party Defendant Standleys Reply Memorandum in Support of Motion for Summary Judgment, filed 3-14-07	513 – 526	3
Affidavit of Counsel in Support of Supplemental Brief in Support of Third Party Defendant Standleys Motion for Summary Judgment, Filed 3-30-07	527 – 533	3
Supplemental Brief in Support of Third Party Defendant Standleys Motion for Summary Judgment, filed 3-30-07	534 – 549	3
Supplemental Reply in Support of Third Party Defendant Standleys Motion for Summary Judgment, filed 4-5-07	550 – 555	3
Motion to Reconsider Order Granting Defendants Standleys Motion For Summary Judgment Entered on March 18, 2005, filed 4-27-07	556 – 562	3

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Affidavit of Kevin E Dinius in Support of Motion to Reconsider Order Granting Defendants Standley Motion for Summary Judgment Entered on March 18, 2005, filed 4-27-07	563 – 607	4
Order Determining Predominant Factor of Contract, filed 4-30-07	608 – 611	4
Order on Summary Judgment, filed 4-30-07	612 – 615	4
Third Party Defendant Standley Trenching Inc Motion to Reconsider Order Partially Denying Motion for Summary Judgment, Filed 5-1-07	616 – 622	4
Third Party Defendant Standley Trenching Supplement Motion to Reconsider Order Partially Denying Motion for Summary Judgment, filed 5-2-07	623 – 627	4
Third Party Defendant Standleys Response to Plaintiffs Motion to Reconsider Order Granting Defendants Standley Motion for Summary Judgment Entered on March 18, 2005 and Request for Rule 11 Sanctions, filed 5-3-07	628 – 632	4
Objection and Response to Standley Trenching Motion In Limine, Filed 5-9-07	633 – 642	4
Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 5-18-07	643 – 645	4
Memorandum in Support of Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 5-18-07	646 – 652	4
Memorandum in Opposition to Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 6-5-07	653 – 664	4
Affidavit of Kevin E Dinius in Support of Plaintiffs Opposition to Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 6-5-07	665 – 734	4
Reply Memorandum in Support of Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 6-11-07	735 – 739	4
Order of Dismissal of Claims Against Defendant Houle & Fills with Prejudice in Case No. CV01-7777, filed 7-24-07	740 – 742	4
Order Approving Rule 12 Appeal by Permission, filed 5-4-10	743 – 746	4
Order Denying Motion for Permission to Appeal, filed 6-15-10	747	4

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Standley Trenching Inc's Motion In Limine, filed 5-27-11	748 – 751	4
Standley Trenching Inc's Motion for Partial Summary Judgment, Filed 5-27-11	752 – 755	4
Standley Trenching Inc's Memorandum in Support of Motion In Limine, filed 5-27-11	756 – 767	4
Standley Trenching Inc's Memorandum in Support of Motion for Partial Summary Judgment, filed 5-27-11	768 – 782	5
Affidavit of M Michael Sasser in Support of Standley Trenching Inc's Motion for Partial Summary Judgment, filed 5-27-11	783 – 814	5
Affidavit of Michael J Hanby II in Support of Plaintiffs Opposition to Defendant Standley Trenching Inc's Motion for Partial Summary Judgment, filed 8-24-11	815 – 823	5
Plaintiffs Opposition to Defendant Standley Trenching Motion for Partial Summary Judgment, filed 8-24-11	824 – 836	5
Plaintiffs Objection to Defendant Standley Trenching Motion In Limine, filed 8-31-11	837 – 842	5
Standley Trenching Inc's Reply Memorandum in Support of Motion For Partial Summary Judgment, filed 8-31-11	843 – 852	5
Affidavit of M Michael Sasser in Support of Standley Trenching Inc's Motion In Limine, filed 9-2-11	853 – 860	5
Standley Trenching Inc's Reply Memorandum in Support of its Motion In Limine, filed 9-2-11	861 – 868	5
Standley Trenching Inc's Notice of Amendment of its Prior Motion For Partial Summary Judgment to a Motion for Summary Judgment Against Beltman Construction, filed 9-13-11	869 – 873	5
Supplemental Briefing in Opposition to Motion In Limine, Filed 9-16-11	874 – 878	5
Affidavit of M Michael Sasser in Support of Standley Trenching Inc Supplemental Memorandum Regarding its Motion for Summary Judgment and Motion In Limine, filed 9-19-11	879 – 888	5

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Standley Trenching Inc's Supplemental Memorandum in Support Of its Motion for Summary Judgment and Motion In Limine, Filed 9-19-11	889 – 906	5
Order Granting Standley Trenching Inc's Complete Motion for Summary Judgment as to All Claims and Causes of Action Stated In Beltman Construction Third Party Complaint, filed 11-8-11	907 – 910	5
Judgment, filed 11-8-11	911 – 914	5
Notice of Appeal, filed 11-16-11	915 – 923	5
Counterclaimants Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim, Filed 11-21-11	924 – 929	5
Affidavit of Robert D Lewis in Support of Counterclaimant's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim, filed 11-21-11	930 – 936	5
Counterclaimants Second Memorandum of Attorneys Fees, Filed 11-21-11	937 – 961	5
Defendant/Third-Party Defendant Standley Trenching Inc's Motion for Costs and Attorneys Fees, filed 11-22-11	962 – 965	6
Defendant/Third-Party Defendant Standley Trenching Inc's Memorandum of Costs and Attorneys Fees, filed 11-22-11	966 – 971	6
Defendant Standley's Supplemental Memorandum of Costs and Attorneys Fees, filed 11-22-11	972 – 977	6
Affidavit of Michael E Kelly in Support of Standley Trenching Inc's Supplemental Memorandum of Costs and Attorneys Fees, Filed 11-22-11	978 – 1021	6
Affidavit of M Michael Sasser in Support of Standley Trenching Inc's Memorandum of Costs and Attorney Fees, filed 11-22-11	1022 – 1058	6
Defendant/Third-Party Defendant Standley Trenching, Inc's Memorandum of Law in Support of its Motion for Costs and Attorney Fees, filed 11-22-11	1059 – 1067	6
Respondent/Counterclaimant Standley Trenching Inc's Request for Additional Transcript and Record, filed 11-29-11	1068 – 1073	6
Request for Additional Transcript and Record, filed 11-30-11	1074 – 1078	6

TABLE OF CONTENTS, Continued

	Page No.	Vol. No.
Objection to Standley Trenching Inc's Motion for Costs and Attorney Fees, filed 12-1-11	1079 – 1087	6
Counterclaimant Standley Trenching Inc's Supplemental Memorandum Supporting an Award of Fees, filed 12-5-11	1088 – 1091	6
Order Re: Amended Notice of Appeal, filed 12-6-11	1092 – 1093	6
Amended Notice of Appeal, filed 12-7-11	1094 – 1102	6
Objection to Defendant/Third Party Defendant/Counterclaimant Standley Trenching Inc's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim, filed 12-13-11	1103 – 1105	6
Defendant/Third Party Defendants Standley Trenching Inc's Reply Memorandum to Plaintiffs Objection to Motion for Costs and Attorney Fees, filed 12-14-11	1106 – 1115	6
Amended Judgment on Counterclaim, filed 12-27-11	1116 – 1119	6
Order on Costs and Attorney Fees, filed 12-29-11	1120 – 1127	6
Second Amended Notice of Appeal, filed 1-3-12	1128 – 1136	6
Third Amended Notice of Appeal, filed 1-13-12	1137 – 1146	6
Amended Judgment for Costs and Attorney Fees, filed 1-17-12	1147 – 1149	6
Fourth Amended Notice of Appeal, filed 1-23-12	1150 – 1159	6
Certificate of Exhibit	1160	6
Certificate of Clerk	1161	6
Certificate of Service	1162	6

INDEX

	Page No.	Vol. No.
Affidavit of Counsel in Support of Supplemental Brief in Support of Third Party Defendant Standleys Motion for Summary Judgment, Filed 3-30-07	527 – 533	3
Affidavit of Counsel in Support of Third Party Defendant Standleys Motion for Summary Judgment, filed 2-21-07	416 – 450	3
Affidavit of Counsel in Support of Third Party Defendant Standleys Reply Memorandum in Support of Motion for Summary Judgment, filed 3-14-07	513 – 526	3
Affidavit of Jill S Holinka in Support of Memorandum in Opposition To Third Party Defendants Motion for Summary Judgment, Filed 3-7-07	451 – 482	3
Affidavit of Kevin E Dinius in Support of Memorandum in Opposition to Defendant Standley Trenching Inc Motion for Summary Judgment on Complaint and Counterclaim, Filed 2-15-05	202 – 349	2
Affidavit of Kevin E Dinius in Support of Motion to Reconsider Order Granting Defendants Standley Motion for Summary Judgment Entered on March 18, 2005, filed 4-27-07	563 – 607	4
Affidavit of Kevin E Dinius in Support of Plaintiffs Opposition to Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 6-5-07	665 – 734	4
Affidavit of Kurt Standley, filed 1-31-05	107 – 110	1
Affidavit of M Michael Sasser in Support of Standley Trenching Inc's Motion for Partial Summary Judgment, filed 5-27-11	783 – 814	5
Affidavit of M Michael Sasser in Support of Standley Trenching Inc's Motion In Limine, filed 9-2-11	853 – 860	5
Affidavit of M Michael Sasser in Support of Standley Trenching Inc Supplemental Memorandum Regarding its Motion for Summary Judgment and Motion In Limine, filed 9-19-11	879 – 888	5
Affidavit of M Michael Sasser in Support of Standley Trenching Inc's Memorandum of Costs and Attorney Fees, filed 11-22-11	1022 – 1058	6
Affidavit of Michael E Kelly in Support of Standley Trenching Inc's Supplemental Memorandum of Costs and Attorneys Fees, Filed 11-22-11	978 – 1021	6

INDEX, Continued

	Page No.	Vol. No.
Affidavit of Michael E. Kelly in Support of Defendant Standley Trenching Inc's Motion for Summary Judgment, filed 1-31-05	137 – 179	1
Affidavit of Michael J Hanby II in Support of Plaintiffs Opposition to Defendant Standley Trenching Inc's Motion for Partial Summary Judgment, filed 8-24-11	815 – 823	5
Affidavit of Robert D Lewis in Support of Counterclaimant's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim, filed 11-21-11	930 – 936	5
Affidavit of Robert D. Lewis, filed 1-31-05	92 – 106	1
Amended Judgment for Costs and Attorney Fees, filed 1-17-12	1147 – 1149	6
Amended Judgment on Counterclaim, filed 12-27-11	1116 – 1119	6
Amended Notice of Appeal, filed 12-7-11	1094 – 1102	6
Answer and Demand for Jury Trial, filed 5-2-02	58 – 64	1
Answer to Defendants' Counterclaim, filed 3-11-02	53 – 57	1
Answer to Second Amended Complaint and Counter Claim, Filed 5-13-03	77 – 82	1
Certificate of Clerk	1161	6
Certificate of Exhibit	1160	6
Certificate of Service	1162	6
Complaint and Demand for Jury Trial, filed 9-12-01	23 – 32	1
Counterclaimant Standley Trenching Inc's Supplemental Memorandum Supporting an Award of Fees, filed 12-5-11	1088 – 1091	6
Counterclaimants Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim, Filed 11-21-11	924 – 929	5
Counterclaimants Second Memorandum of Attorneys Fees, Filed 11-21-11	937 – 961	5
Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 5-18-07	643 – 645	4

INDEX, Continued

	Page No.	Vol. No.
Defendant Standley Trenching Inc's Motion for Summary Judgment, filed 1-31-05	111 – 113	1
Defendant Standley's Supplemental Memorandum of Costs and Attorneys Fees, filed 11-22-11	972 – 977	6
Defendant/Third Party Defendants Standley Trenching Inc's Reply Memorandum to Plaintiffs Objection to Motion for Costs and Attorney Fees, filed 12-14-11	1106 – 1115	6
Defendant/Third-Party Defendant Standley Trenching Inc's Motion for Costs and Attorneys Fees, filed 11-22-11	962 – 965	6
Defendant/Third-Party Defendant Standley Trenching Inc's Memorandum of Costs and Attorneys Fees, filed 11-22-11	966 – 971	6
Defendant/Third-Party Defendant Standley Trenching, Inc's Memorandum of Law in Support of its Motion for Costs and Attorney Fees, filed 11-22-11	1059 – 1067	6
Defendants Standley Trenching Inc's Memorandum in Support of Motion for Summary Judgment, filed 1-31-05	114 – 136	1
Defendants Standley Trenching Inc's Reply Memorandum on Motion for Summary Judgment, filed 2-22-05	350 – 373	2
First Amended Complaint and Demand for Jury Trial, filed 12-21-01	33 – 46	1
Fourth Amended Notice of Appeal, filed 1-23-12	1150 – 1159	6
Judgment on Counterclaim, filed 4-4-05	380 – 382	2
Judgment, filed 11-8-11	911 – 914	5
Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of the Case, filed 8-18-05	383 – 388	2
Memorandum in Opposition to Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 6-5-07	653 – 664	4
Memorandum in Opposition to Third Party Defendants Motion for Summary Judgment, filed 3-7-07	483 – 499	3
Memorandum in Support of Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 5-18-07	646 – 652	4

INDEX, Continued

	Page No.	Vol. No.
Memorandum in Support of Motion for Summary Judgment on Counterclaim, filed 1-31-05	86 – 91	1
Motion for Summary Judgment on Counterclaim, filed 1-31-05	83 – 85	1
Motion to Reconsider Order Granting Defendants Standleys Motion For Summary Judgment Entered on March 18, 2005, filed 4-27-07	556 – 562	3
Notice of Appeal, filed 11-16-11	915 – 923	5
Objection and Response to Standley Trenching Motion In Limine, Filed 5-9-07	633 – 642	4
Objection to Defendant/Third Party Defendant/Counterclaimant Standley Trenching Inc's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim, filed 12-13-11	1103 – 1105	6
Objection to Standley Trenching Inc's Motion for Costs and Attorney Fees, filed 12-1-11	1079 – 1087	6
Order Approving Rule 12 Appeal by Permission, filed 5-4-10	743 – 746	4
Order Confirming Summary Judgment, filed 3-28-05	377 – 379	2
Order Denying Motion for Permission to Appeal, filed 6-15-10	747	4
Order Determining Predominant Factor of Contract, filed 4-30-07	608 – 611	4
Order Granting Defendant's Motion for Summary Judgment, Filed 3-22-05	374 – 376	2
Order Granting Standley Trenching Inc's Complete Motion for Summary Judgment as to All Claims and Causes of Action Stated In Beltman Construction Third Party Complaint, filed 11-8-11	907 – 910	5
Order of Dismissal of Claims Against Defendant Houle & Fills with Prejudice in Case No. CV01-7777, filed 7-24-07	740 – 742	4
Order on Costs and Attorney Fees, filed 12-29-11	1120 – 1127	6
Order on Summary Judgment, filed 4-30-07	612 – 615	4
Order Re: Amended Notice of Appeal, filed 12-6-11	1092 – 1093	6

INDEX, Continued

	Page No.	Vol. No.
Plaintiffs Objection to Defendant Standley Trenching Motion In Limine, filed 8-31-11	837 – 842	5
Plaintiffs Opposition to Defendant Standley Trenching Motion for Partial Summary Judgment, filed 8-24-11	824 – 836	5
Plaintiffs' Memorandum in Opposition to Defendant Standley Trenching Motion for Summary Judgment on the Second Amended Complaint and Counterclaim, filed 2-15-05	180 – 201	1
Register of Actions	2 – 22	1
Reply Memorandum in Support of Defendant Houles Motion for Summary Judgment in Case No. CV01-7777, filed 6-11-07	735 – 739	4
Request for Additional Transcript and Record, filed 11-30-11	1074 – 1078	6
Respondent/Counterclaimant Standley Trenching Inc's Request for Additional Transcript and Record, filed 11-29-11	1068 – 1073	6
Second Amended Complaint and Demand for Jury Trial, filed 5-2-03	65 – 76	1
Second Amended Notice of Appeal, filed 1-3-12	1128 – 1136	6
Standley Trenching Inc's Memorandum in Support of Motion for Partial Summary Judgment, filed 5-27-11	768 – 782	5
Standley Trenching Inc's Memorandum in Support of Motion In Limine, filed 5-27-11	756 – 767	4
Standley Trenching Inc's Motion for Partial Summary Judgment, Filed 5-27-11	752 – 755	4
Standley Trenching Inc's Motion In Limine, filed 5-27-11	748 – 751	4
Standley Trenching Inc's Notice of Amendment of its Prior Motion For Partial Summary Judgment to a Motion for Summary Judgment Against Beltman Construction, filed 9-13-11	869 – 873	5
Standley Trenching Inc's Reply Memorandum in Support of its Motion In Limine, filed 9-2-11	861 – 868	5
Standley Trenching Inc's Reply Memorandum in Support of Motion For Partial Summary Judgment, filed 8-31-11	843 – 852	5

INDEX, Continued

	Page No.	Vol. No.
Standley Trenching Inc's Supplemental Memorandum in Support Of its Motion for Summary Judgment and Motion In Limine, Filed 9-19-11	889 – 906	5
Supplemental Brief in Support of Third Party Defendant Standleys Motion for Summary Judgment, filed 3-30-07	534 – 549	3
Supplemental Briefing in Opposition to Motion In Limine, Filed 9-16-11	874 – 878	5
Supplemental Reply in Support of Third Party Defendant Standleys Motion for Summary Judgment, filed 4-5-07	550 – 555	3
Third Amended Notice of Appeal, filed 1-13-12	1137 – 1146	6
Third Party Defendant Standley Trenching Inc Motion to Reconsider Order Partially Denying Motion for Summary Judgment, Filed 5-1-07	616 – 622	4
Third Party Defendant Standley Trenching Supplement Motion to Reconsider Order Partially Denying Motion for Summary Judgment, filed 5-2-07	623 – 627	4
Third Party Defendant Standley's Memorandum in Support of Motion for Summary Judgment, filed 2-21-07	392 – 415	3
Third Party Defendant Standley's Motion for Summary Judgment, Filed 2-21-07	389 – 391	2
Third Party Defendant Standleys Reply Memorandum in Support of Motion for Summary Judgment, filed 3-14-07	500 – 512	3
Third Party Defendant Standleys Response to Plaintiffs Motion to Reconsider Order Granting Defendants Standley Motion for Summary Judgment Entered on March 18, 2005 and Request for Rule 11 Sanctions, filed 5-3-07	628 – 632	4
Verified Answer and Counterclaim, filed 2-22-02	47 – 52	1

Other Claims

Date		Judge
09/12/2001	New Case Filed	Gerald L. Weston
	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: white Peterson Receipt number: 0555445 Dated: 09/12/2001 Amount: \$77.00 (Check)	Gerald L. Weston
	Summons Issued	Gerald L. Weston
10/12/2001	Change Assigned Judge (batch process)	
	Change Assigned Judge (batch process)	
10/17/2001	Notice Of Appearance (atty Trainor for def)	Gregory M Culet
	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Trainor, Kevin F (attorney for Standley, Scott) Receipt number: 0560555 Dated: 10/18/2001 Amount: \$47.00 (Check)	Gregory M Culet
12/21/2001	1st Amended Complaint Filed	Gregory M Culet
02/22/2002	Answer & counterclaim	Gregory M Culet
	Filing: J8B - Special Motions Counterclaim With Prior Appearance Paid by: Trainor, Kevin F (attorney for Standley, Scott) Receipt number: 0578693 Dated: 02/22/2002 Amount: \$8.00 (Check)	Gregory M Culet
03/8/2002	Summons Issued amended	Gregory M Culet
03/11/2002	Answer to def counterclaim	Gregory M Culet
05/2/2002	Answer & demand for JT (atty Mccurdy for J Houle & Fils)	Gregory M Culet
	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: McCurdy, William A (attorney for J Houle & Fils) Receipt number: 0589566 Dated: 05/02/2002 Amount: \$47.00 (Check)	Gregory M Culet
05/8/2002	Notice Of Service of Discovery	Gregory M Culet
05/14/2002	Request For Trial Setting	Gregory M Culet
03/10/2002	Hearing Scheduled (Jury Trial 02/03/2003 09:30 AM)	Gregory M Culet
	Hearing Scheduled (Pre Trial 12/13/2002 02:30 PM)	Gregory M Culet
	Order setting case for trial & Pt & scheduling order	Gregory M Culet
	Order for preparation of jury instructions & verdict Form	Gregory M Culet
	Notice Of Service of discovery req	Gregory M Culet
07/9/2002	Motion to compel discovery responses	Gregory M Culet
	Affidavit of wlliam A Mccurdy	Gregory M Culet
	Notice of hearing 7-26-02	Gregory M Culet
	Hearing Scheduled (Motion Hearing 07/26/2002 01:30 PM)	Gregory M Culet
07/24/2002	Affidavit Of Service	Gregory M Culet
	Acceptance of service	Gregory M Culet
07/25/2002	Hearing result for Motion Hearing held on 07/26/2002 01:30 PM: Hearing Vacated-PER McCurdy	Gregory M Culet
08/13/2002	Notice Of Service of discovery requests	Gregory M Culet
08/26/2002	Notice Of Service of discovery documents (2)	Gregory M Culet
10/7/2002	Motion to compel discovery	Gregory M Culet
	Notice of hearing 10-25-02	Gregory M Culet

Other Claims

Date		Judge
0/7/2002	Hearing Scheduled (Motion Hearing 10/25/2002 01:30 PM)	Gregory M Culet
0/10/2002	Notice of taking depo (2)	Gregory M Culet
0/11/2002	Notice Of Taking Deposition Amended Charles DeGroot Duces tecum	Gregory M Culet
0/15/2002	Def Motion to compel	Gregory M Culet
	Affidavit of H English in supp of def Motion to compel	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
0/17/2002	2nd Amended Notice of taking depo of C Degroot	Gregory M Culet
	Amended notice of taking depo of E Degroot	Gregory M Culet
	Notice of taking depo of T Beltman	Gregory M Culet
0/18/2002	Motion for summary judgment	Gregory M Culet
	Lodged brief in support mo sum judgment	Gregory M Culet
	Affidavit of Scott Standley	Gregory M Culet
	Notice of hearing 11-22-02	Gregory M Culet
	Hearing Scheduled (Motion Hearing 11/22/2002 01:30 PM)	Gregory M Culet
	Notice of association of counsel for def	Gregory M Culet
0/22/2002	Notice of Service Re: Discovery - Plaintiff	Gregory M Culet
	Notice Of Service Discovery	Gregory M Culet
10/23/2002	Notice of Service Re: Discovery ____	Gregory M Culet
10/24/2002	Hearing result for Motion Hearing held on 10/25/2002 01:30 PM: Hearing Vacated-per McCurdy	Gregory M Culet
	Notice of withdrawal of mo & vacaation of hearing (faxed	Gregory M Culet
10/25/2002	Notice vacating hearing & resetting the same (faxed	Gregory M Culet
	Stipulation for Dismissal with prej as to def Scott Standley	Gregory M Culet
	Notice Of Taking Deposition of Tom Storm Duces tecum	Gregory M Culet
10/29/2002	Order of Dismissal with prej as to def Scott Standley	Gregory M Culet
11/1/2002	Notice Of Service of discovery	Gregory M Culet
11/14/2002	Substitution Of Counsel for de Kurt Standley & Standley Trenching	Gregory M Culet
11/15/2002	Notice of Service Re: Discovery ____	Gregory M Culet
11/19/2002	Notice of taking depo duces/tecum (3)	Gregory M Culet
11/22/2002	Hearing result for Motion Hearing held on 11/22/2002 01:30 PM: Hearing Vacated	Gregory M Culet
	Motion for summary judgment	Gregory M Culet
	Affidavit of Michael Kelly in support of mo for summary judgment	Gregory M Culet
	Lodged memo in support of mo sum judgment	Gregory M Culet
	Notice of hearing 12-23-02 11:00	Gregory M Culet
	Hearing Scheduled (Motion Hearing 12/23/2002 11:00 AM)	Gregory M Culet
11/26/2002	Notice Of Service	Gregory M Culet
12/2/2002	Motion to amend complaint	Gregory M Culet
	Motion to vacate trial setting	Gregory M Culet

Other Claims

Date		Judge
2/2/2002	Notice of hearing 12-23-02 11:00	Gregory M Culet
2/4/2002	Motion to amend counterclaim	Gregory M Culet
	Affidavit of Robert D Lewis support of motion	Gregory M Culet
	Notice of hearing 12-23-02	Gregory M Culet
2/9/2002	Plt motion rule 56f motion	Gregory M Culet
	Affidavit of Kevin E Dinius support of Plt mo	Gregory M Culet
	Affidavit Kevin Dinius in support of memo in oppose to def Standley mo sum judg	Gregory M Culet
	Lodged memo of points & authorities in support of Plt objection to def standley mo sum judgment	Gregory M Culet
	Notice of hearing 12-23-02 11:00	Gregory M Culet
12/12/2002	Stipulation to vacate trial setting and pre trial conference	Gregory M Culet
	Order vacating trial setting & pretrial confrence **FAX	Gregory M Culet
	Hearing result for Pre Trial held on 12/13/2002 02:30 PM: Hearing Vacated	Gregory M Culet
	Hearing result for Jury Trial held on 02/03/2003 09:30 AM: Hearing Vacated	Gregory M Culet
12/23/2002	Stipulation to vacate DEC 23 mo hearing & allow amendment of pleadings (Faxed)	Gregory M Culet
1/13/2003	Notice Of Service of Discovery	Gregory M Culet
3/3/2003	Notice Of Service	Gregory M Culet
3/24/2003	Request For Trial Setting	Gregory M Culet
3/25/2003	Notice Of Taking Deposition Amended depo duces tecum Troy Hartzell	Gregory M Culet
	Notice Of Taking Deposition Amended Duces tecum Jeff Griggs	Gregory M Culet
	Notice Of Taking Deposition Amended Duces tecum Kurt Stradley	Gregory M Culet
3/27/2003	Response To Request For Trial Setting	Gregory M Culet
3/31/2003	Response To Request For Trial Setting for def Kurt	Gregory M Culet
	Notice Of Service of Discovery - Plaintiff's First Set of Request for Admissions	Gregory M Culet
	Notice Of Service of Discovery - Plaintiff's Third Set of Request for Production Documents to Def Standley	Gregory M Culet
4/1/2003	Response To Request For Trial Setting	Gregory M Culet
4/9/2003	Order resetting case for trial & pretrial & scheduling order	Gregory M Culet
	Hearing Scheduled (Pre Trial 11/24/2003 08:30 AM)	Gregory M Culet
	Hearing Scheduled (Jury Trial 01/27/2004 09:30 AM)	Gregory M Culet
4/23/2003	Second Amended Notice of Taking Deposition Duces Tecum of Kurt Standley	Gregory M Culet
	Second Amended Notice of Taking Deposition Duces Tecum of Jeff Griggs	Gregory M Culet
	Second Amended Notices of Taking Deposition Duces Tecum of Troy Hartzell	Gregory M Culet
4/24/2003	Stipulation for scheduling of discovery deadlines	Gregory M Culet

Other Claims

Date		Judge
4/25/2003	Order vacating Dec 23,2002 mo hearings allowing amendment of Pleadings Notice Of Service	Gregory M Culet Gregory M Culet
5/1/2003	Notice of cont depo duces tecum of Charles Degroot Notice Of Taking Deposition Duces tecum Ernest Degroot	Gregory M Culet Gregory M Culet
5/2/2003	2nd Amended Complaint Filed	Gregory M Culet
5/13/2003	Answer to 2nd amended complaint & counterclaim	Gregory M Culet
7/14/2003	Notice Of Service	Gregory M Culet
7/29/2003	Amended Notice Of Taking Deposition Duces Tecum of Ernest Degroot Amended Notice Of Continued Deposition Duces Tecum of Charles Degroot	Gregory M Culet Gregory M Culet
8/19/2003	Notice Of Service of Discovery	Gregory M Culet
8/19/2003	Second Amended Notice Of Continued Deposition Duces Tecum of Charles Degroot - No Envelope Provided, Copies Laid in File Second Amended Notice Of Continued Deposition Duces Tecum of Ernest Degroot - No Envelopes Provided, Copies Laid in File	Gregory M Culet Gregory M Culet
8/24/2003	Reply to def amended counterclaim	Gregory M Culet
10/1/2003	Plt disclosure of expert witnesses(faxed)	Gregory M Culet
10/14/2003	4th AmendedNotice Of Taking Deposition Duces tecum Troy Hartzell 4th amendedNotice Of Taking Deposition Duces tecum Jeff Griggs 4th amended notice taking depo duces tecum Kurt Standley	Gregory M Culet Gregory M Culet Gregory M Culet
10/29/2003	Def Standley Trenching, Inc., d/b/a Standley & Co's Disclosure of Wxpert Witnesses FAXED***	Gregory M Culet
11/21/2003	Stipulation to reset pretrial confrence Hearing result for Pre Trial held on 11/24/2003 08:30 AM: Hearing vacated	Gregory M Culet Gregory M Culet
12/11/2003	5th Amended Notice of taking depo d/tecum (3)	Gregory M Culet
12/15/2003	Notice Of Service of discovery	Gregory M Culet
12/17/2003	Def Standley Motion for protective order (faxed) Affidavit of Peg Dougherty in support of def Standleys mo for protective order (faxed) Lodged def Standleys memo in support of mo (faxed) Notice of hearing 12-31-03 9:00 (faxed) Hearing Scheduled (Motion Hearing 12/31/2003 09:00 AM)	Gregory M Culet Gregory M Culet Gregory M Culet Gregory M Culet Gregory M Culet
12/19/2003	Notice Of Service	Gregory M Culet
12/22/2003	6th Amended Notice of taking depo d/tecum (3)	Gregory M Culet
12/26/2003	4th amendedNotice Of Taking Deposition cont depo Duces tecum Charles Degroot (faxed)	Gregory M Culet
12/29/2003	Hearing Scheduled (Jury Trial 06/01/2004 09:00 AM) Hearing Scheduled (Pre Trial 05/06/2004 08:30 AM) Order re setting case for trial & PT & scheduling order	Gregory M Culet Gregory M Culet Gregory M Culet

Other Claims

Date		Judge
2/2/2004	Order for mediation	Gregory M Culet
	Order on PT/Status conference	Gregory M Culet
2/25/2004	Notice of taking depo of pipeco	Gregory M Culet
2/4/2004	Notice of Mediation	Gregory M Culet
	Notice Of Taking Deposition of Agent of J. Houle & Fils, Inc	Gregory M Culet
2/11/2004	Def Houle & Fils Third Motion To Compel	Gregory M Culet
	Affidavit Of William Mccurdy	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
	Hearing Scheduled (Motion To Compel 03/19/2004 01:30 PM)	James C. Morfitt
2/12/2004	Def Houle & Fils Response To Mediation (fax)	Gregory M Culet
	Motion To Shorten Time (re motion to compel) (fax)	Gregory M Culet
2/16/2004	Def Standleys Joinder To Def Response To Mediation	Gregory M Culet
2/18/2004	Plaint supplemental disclosure of expert witnesses	Gregory M Culet
	Notice of Service Re: Discovery ____	Gregory M Culet
2/19/2004	Hearing result for Motion Hearing held on 03/19/2004 01:30 PM: Hearing Vacated	James C. Morfitt
2/9/2004	Notice Of Service of Discovery	Gregory M Culet
2/19/2004	Amended Notice of taking Audio/Visul Depo og Agent Houle& fils INC	Gregory M Culet
2/21/2004	Notice of service of discovery	Gregory M Culet
	Notice of Service of Discovery	Gregory M Culet
2/27/2004	Notice Of Service	Gregory M Culet
2/4/2004	Notice Of Service	Gregory M Culet
	Pre-trial Statement/Def J Houle (faxed)	Gregory M Culet
2/5/2004	Pre-trial Statement - Def Sstandley (fax)	Gregory M Culet
	Witness and Exhibit List - Def Standley (fax 2 Sep Docs)	Gregory M Culet
	Witness and Exhibit List - Pltf	Gregory M Culet
2/6/2004	Hearing result for Pre Trial held on 05/06/2004 08:30 AM: Interim Hearing Held	Gregory M Culet
	Notice of Service Re: Discovery - Def	Gregory M Culet
	Suppl Disclosure Of Expert Witnesses (Def Standley)	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
	Hearing Scheduled (Motion Hearing 05/28/2004 01:30 PM)	Gregory M Culet
	Motion to Compel and Notice of Hearing	Gregory M Culet
	Affidavit of kevin e dinius in support of motion to compel	Gregory M Culet
	plaintiff charles degroot & degroot dairy pretrial statement	Gregory M Culet
2/7/2004	Answer To Second Amended Complaint (Def)	Gregory M Culet
2/11/2004	Stipulation & Order for Dismissal as to Kurt Standley, Scott Standley & Standley Trenching, Inc, DBA Standley & Co.	Gregory M Culet
	Order on PreTrial Conference (Gregory M Culet

Other Claims

Date		Judge
11/11/2004	Hearing result for Jury Trial held on 06/01/2004 09:00 AM: Hearing Vacated Reset	Gregory M Culet
	Hearing Scheduled (Jury Trial 10/25/2004 09:00 AM) 10 Day Jury Trial	Gregory M Culet
	Hearing Scheduled (Jury Trial 11/01/2004 09:00 AM) 10 Day Jury Trial	Gregory M Culet
	Hearing Scheduled (Jury Trial 11/03/2004 09:00 AM) 10 Day Jury Trial	Gregory M Culet
	Hearing Scheduled (Jury Trial 11/08/2004 09:00 AM) 10 Day Jury Trial	Gregory M Culet
	Hearing Scheduled (Conference - Status 10/22/2004 01:00 PM)	Gregory M Culet
	Hearing Scheduled (Conference - Status 10/22/2004 01:00 PM)	Gregory M Culet
11/19/2004	Hearing result for Motion Hearing held on 05/28/2004 01:30 PM: Hearing Vacated Motion to Compel-per White Peterson	Gregory M Culet
11/24/2004	Order ReSetting Case for Trial and pretrial	Gregory M Culet
	Hearing result for Jury Trial held on 10/25/2004 09:00 AM: Hearing Vacated 10 Day Jury Trial	Gregory M Culet
	Hearing Scheduled (Jury Trial 04/25/2005 09:00 AM) 10 day trial	Gregory M Culet
10/18/2004	Hearing result for Conference - Status held on 10/22/2004 01:00 PM: Hearing Vacated-trial was moved to be reset	Gregory M Culet
10/22/2004	Order Vacating Status Conference	Gregory M Culet
12/8/2004	Notice Of Service	Gregory M Culet
12/14/2004	Notice Of Service	Gregory M Culet
1/13/2005	Notice of change of address	Gregory M Culet
1/14/2005	amended Notice of change of address	Gregory M Culet
1/31/2005	Hearing Scheduled (Motion Hearing 03/01/2005 09:00 AM)	Gregory M Culet
	Notice Of Hearing 03/01/2005	Gregory M Culet
	Affidavit robert lewis	Gregory M Culet
	Affidavit kurt stanley	Gregory M Culet
	Motion for summary judgment	Gregory M Culet
	Memorandum in support of motion summary judgment	Gregory M Culet
	Motion for Summary Judgment from Def Standley Trenching INCS	Gregory M Culet
	Affidavit of Michael Kelly in support of motn for summary judgment	Gregory M Culet
	Defendants Standley Trenching INCS Memorandum in support of Motn for summary Judgment	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
2/15/2005	Plaintiff's Memorandum in Opposition	Gregory M Culet
	Affidavit of Kevin E Dinius in Support of Memorandum	Gregory M Culet
2/22/2005	Reply Memorandum on Motion for summary judgment on counterclaim	Gregory M Culet
	Defendants Standley trenching, inc.'s reply Memorandum on motion for summary Judgment	Gregory M Culet
	Affidavit of Michael E. Kelly in support of defendat stadley trenching, Inc.'s reply memorandum on motion for summary judgment	Gregory M Culet
3/1/2005	Hearing result for Motion Hearing held on 03/01/2005 09:00 AM: Motion Held	Gregory M Culet

Other Claims

Date		Judge
4/1/2005	Hearing result for Motion Hearing held on 03/01/2005 09:00 AM: Motion Granted	Gregory M Culet
4/17/2005	Hearing Scheduled (Pre Trial 03/21/2005 08:30 AM)	Gregory M Culet
4/18/2005	Hearing Scheduled (Motion Hearing 04/22/2005 01:30 PM)	Gregory M Culet
	Notice Of Hearing 04/22/2005 (fax)	Gregory M Culet
	Motion to vacate trial setting (fax)	Gregory M Culet
	Affidavit kevin dinius (fax)	Gregory M Culet
	Motion to consolidate (fax)	Gregory M Culet
4/21/2005	Hearing result for Pre Trial held on 03/21/2005 08:30 AM: Pre-Trial in Chambers	Gregory M Culet
4/22/2005	Order granting defendants motion for summary judgment	Gregory M Culet
4/28/2005	Order Confirming Summary Judgment	Gregory M Culet
4/29/2005	Order on pretrial conference	Gregory M Culet
4/4/2005	Judgment On Counterclaim - \$20,259.57	Gregory M Culet
4/5/2005	Stipulation to vacate & Cont trial setting	Gregory M Culet
4/6/2005	Stipulation for substitution of counsel	Gregory M Culet
4/7/2005	Order Vacating and Continuing Trial Setting	Gregory M Culet
	Hearing result for Jury Trial held on 04/25/2005 09:00 AM: Hearing Vacated 10 day trial	Gregory M Culet
4/18/2005	Hearing Scheduled (Motion Hearing 05/31/2005 01:30 PM)	Gregory M Culet
	Notice Of Hearing 05/31/2005	Gregory M Culet
	Memorandum of atty fees	Gregory M Culet
	Affidavit of robert lewis	Gregory M Culet
	Motion by counterclaimant for award of prejudgment interest	Gregory M Culet
	defendant's standley's Memorandum of Costs and Fees (fax)	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
	Affidavit Of Kevin E Dinius In Support Of Motion To Reconsider Judgment On Counterclaim	Gregory M Culet
	Plaintiff Motion To Reconsider Judgment On Counterclaim	Gregory M Culet
4/19/2005	Affidavit of Michael E Kelly	Gregory M Culet
	Affidavit of Robert D Lewis	Gregory M Culet
	Affidavit of Kevin Trainor	Gregory M Culet
	Lodged Memorandum in support of def Standleys memorandum of costs and atty fees	Gregory M Culet
4/22/2005	Hearing result for Motion Hearing held on 04/22/2005 01:30 PM: Hearing Vacated	Gerald L. Weston
5/19/2005	Motion for rule 54b (fax)	Gregory M Culet
	Motion to shorten time and notice of hearing (fax)	Gregory M Culet
	Memorandum opposing pltf's motion to reconsider (fax)	Gregory M Culet

Case: CV-2001-0007777-C Current Judge: Molly J Huskey

Charles Jay Degroot vs. Kurt Standley, etal.

Charles Jay Degroot vs. Kurt Standley, Scott Standley, Standley Trenching, J Houle & Fils

Other Claims

Date		Judge
5/25/2005	Plt objection to counterclaim mo for award of prejudgment interest & entry of amended judg & counterclaim (fax)	Gregory M Culet
5/26/2005	Counterdefendants Memorandum In Support Of Motion To Disallow Attorney Fees	Gregory M Culet
	Plaintiffs Memorandum In Support Of Motion To Disallow Costs And Attorney Fees	Gregory M Culet
	Plaintiffs Motion To Disallow Costs And Attorney Fees	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
5/27/2005	Hearing Scheduled (Motion Hearing 06/29/2005 01:30 PM)	Gregory M Culet
	Opposition to counterclaimant Standley Trenching Inc.'s motion	Gregory M Culet
5/31/2005	Hearing result for Motion Hearing held on 05/31/2005 01:30 PM: Hearing Held	Gregory M Culet
5/6/2005	Order (from 5-31-05 hearing)	Gregory M Culet
5/22/2005	Response to Pltf's memorandum in support of motion to disallow costs and atty fees (fax)	Gregory M Culet
5/29/2005	Hearing result for Motion Hearing held on 06/29/2005 01:30 PM: Hearing Held	Gregory M Culet
7/22/2005	Lodged supplemental briefing re: pltf's motion to disallow costs and fees (fax)	Gregory M Culet
	Lodged supplemental memo in support of mo to Disallow costs & atty fee	Gregory M Culet
7/25/2005	Lodged counterclaimant Standley Trenching suppl memo supporting award of fees	Gregory M Culet
8/1/2005	Response to plaintiffs' supplemental memorandum in support of motion to disallow costs and attorney fees (fax)	Gregory M Culet
8/18/2005	Memorandum Decision Reserving Issue of atty fees & costs until final resolution of the case	Gregory M Culet
10/28/2005	Request For Trial Setting (fax)	Gregory M Culet
11/7/2005	Response To Request For Trial Setting	Gregory M Culet
11/8/2005	Response To Request For Trial Setting third party defendant	Gregory M Culet
11/14/2005	Response To Request For Trial Setting-William McCurdy	Gregory M Culet
12/1/2005	Order Setting Case for trial and pretrial	Gregory M Culet
	Hearing Scheduled (Jury Trial 10/31/2006 09:30 AM) 7 day	Gregory M Culet
	Hearing Scheduled (Jury Trial 11/06/2006 09:30 AM) 7 day	Gregory M Culet
	Hearing Scheduled (Pre Trial 09/25/2006 08:30 AM)	Gregory M Culet
12/13/2005	Order Resetting Pretrial Conference	Gregory M Culet
	Hearing result for Pre Trial held on 09/25/2006 08:30 AM: Hearing Vacated	Gregory M Culet
	Hearing Scheduled (Pre Trial 09/26/2006 08:30 AM) in chambers	Gregory M Culet
1/23/2006	Stipulation as to scheduling and planning	Gregory M Culet
2/14/2006	Notice Of Service	Gregory M Culet
4/5/2006	Third PArty Def Standley Motion to compel	Gregory M Culet

Other Claims

Date		Judge
5/2006	Affidavit of counsel in support of motion to compel	Gregory M Culet
	Third Party Def Standley memo in support of its mo to compel	Gregory M Culet
	Notice Of Hearing 4-28-06	Gregory M Culet
	Hearing Scheduled (Motion Hearing 04/28/2006 01:30 PM) mo to compel	Gregory M Culet
6/21/2006	Hearing Scheduled (Motion Hearing 04/27/2006 01:30 PM) mo to compel	Gregory M Culet
6/24/2006	Order amending hearing and notice of hearing 4-27-06	Gregory M Culet
6/25/2006	Hearing result for Motion Hearing held on 04/27/2006 01:30 PM: Hearing Vacated mo to compel- Michael Kelly	Gregory M Culet
6/8/2006	Third Party Def Standley Trenchins Motion to compel	Gregory M Culet
	Lodged third party def Standley memo in support of mo to compel	Gregory M Culet
	Affidavit of counsel in support of mo to compel	Gregory M Culet
	Notice Of Hearing 6-22-06	Gregory M Culet
	Hearing Scheduled (Motion Hearing 06/22/2006 09:00 AM) mo compel	Gregory M Culet
6/9/2006	Substitution Of Counsel /def 3rd party Plt	Gregory M Culet
6/22/2006	Hearing result for Motion Hearing held on 06/22/2006 09:00 AM: Hearing Held mo compel	Gregory M Culet
	Hearing Scheduled (Conference - Status 07/28/2006 08:30 AM) scheduling conference-via telephone	Gregory M Culet
6/27/2006	Memorandum of costs and affidavit of attorneys fees in regard to third party defendants motion to compel	Gregory M Culet
7/5/2006	Order Granting third party Def Standleys Motion to compel	Gregory M Culet
7/10/2006	Substitution Of Counsel for def (fax)	Gregory M Culet
7/19/2006	Notice Of Service of a discovery document (fax)	Gregory M Culet
7/21/2006	Order Granting Third Party Def Standleys Costs & atty fees in regard to Third Party def motion to compel \$683.86	Gregory M Culet
8/4/2006	Order for scheduling & Planning	Gregory M Culet
	chamber minute	Gregory M Culet
8/8/2006	Notice Of Service (2)	Gregory M Culet
8/11/2006	Notice of Deposition Duces Tecum of Dennis Burke	Gregory M Culet
	Notice of deposition duces tecum of Dave Stubbs	Gregory M Culet
	Notice of deposition duces tecum of Dean Morrison	Gregory M Culet
	Notice of deposition duces tecum of Tom Storm	Gregory M Culet
	Notice of deposition duces tecum of Charles Degroot	Gregory M Culet
	Notice of deposition duces tecum of Ernest Degroot	Gregory M Culet
	Notice of deposition duces tecum of Stan Beltman	Gregory M Culet
	Notice of deposition duces tecum of Tom Beltman	Gregory M Culet
8/24/2006	Affidavit Of Service	Gregory M Culet
	Affidavit Of Service	Gregory M Culet
9/7/2006	Motion for protective order	Gregory M Culet
	Affidavit of james vavrek	Gregory M Culet

Other Claims

Date		Judge
4/11/2006	Hearing result for Conference - Status held on 07/28/2006 08:30 AM: Hearing Held scheduling conference-via telephone-court to set	Gregory M Culet
	Motion for an order to shorten time (fax)	Gregory M Culet
	Motion to be substituted as third party def (fax)	Gregory M Culet
	Notice Of Hearing 9-21-06 9:00 (fax)	Gregory M Culet
	Hearing Scheduled (Motion Hearing 09/21/2006 09:00 AM)	Gregory M Culet
	Notice Of Service of discovery documents	Gregory M Culet
4/12/2006	Hearing result for Pre Trial held on 09/26/2006 08:30 AM: Hearing Vacated in chambers	Gregory M Culet
	Hearing result for Motion Hearing held on 09/21/2006 09:00 AM: Hearing Vacated	Gregory M Culet
	Amended motion to be substituted as third party plaintiffs	Gregory M Culet
4/13/2006	Order to shorten time	Gregory M Culet
	Hearing Scheduled (Motion Hearing 09/21/2006 09:00 AM) no shorten time	Gregory M Culet
4/19/2006	Standleys Memorandum in oppose to Degroots Rule 25 c mo (fax)	Gregory M Culet
	Third Party Def Standley Trenching Response to Plt mo for protective order (fax)	Gregory M Culet
	Affidavit of counsel in oppose to Degroots rule 25 c mo (fax)	Gregory M Culet
4/21/2006	Hearing result for Motion Hearing held on 09/21/2006 09:00 AM: Hearing Held no shorten time	Gregory M Culet
4/26/2006	Hearing Scheduled (Pre Trial 10/17/2006 08:30 AM)	Gregory M Culet
4/27/2006	Notice Of Hearing	Gregory M Culet
4/28/2006	Notice Of Taking Audio-visual Deposition of G. William Novinger--Duces Tecum pursuant to Idaho rule of civil procedure 30(b)(4)	Gregory M Culet
5/02/2006	Notice Of Taking Deposition Duces tecum Dennis Burke	Gregory M Culet
	Notice Of Taking Deposition Duces Tecum Stan Beltman	Gregory M Culet
	Notice Of Taking Deposition Duces tecum Tom Beltman	Gregory M Culet
	Notice Of Taking Deposition Ernest Degroot	Gregory M Culet
	Notice Of Taking Deposition Charles Degroot	Gregory M Culet
5/05/2006	Plaintiff's Motion to reconsider ruling on motion to be substituted as third party plaintiff	Gregory M Culet
	Affidavit of Julie Klein Fischer in support of plaintiffs' motion to reconsider ruling on motion to be substituted as third party plaintiff	Gregory M Culet
	Notice Of Hearing re plaintiffs motion to reconsider ruling on motion to be substituted as third party plaintiff	Gregory M Culet
	Hearing Scheduled (Motion Hearing 10/11/2006 04:00 AM) motn to reconsider ruling on motn to be substituted as third party pltf	Gregory M Culet
5/06/2006	Hearing Scheduled (Motion Hearing 10/11/2006 04:00 PM) motn to reconsider ruling on motn to be substituted as third party pltf	Gregory M Culet
	Motion for and Order to Shorten Time	Gregory M Culet

Other Claims

Date	Description	Judge
0/10/2006	Notice Of Hearing (fax) 10-11-06	Gregory M Culet
	Motion to shorten time (fax)	Gregory M Culet
0/11/2006	Third PArty Def Standleys response to Plt mo to reconsider ruling on IRCP 25c motion (fax)	Gregory M Culet
	Hearing result for Motion Hearing held on 10/11/2006 04:00 PM: Motion Held motn to reconsider ruling on motn to be substituted as third party pltf	Gregory M Culet
	Motion Granted	Gregory M Culet
0/17/2006	Hearing result for Pre Trial held on 10/17/2006 08:30 AM: Hearing Vacated	Gregory M Culet
0/25/2006	withdrawal of atty for def Scott Standley	Gregory M Culet
	Order granting plaintiff's motion to be substituted as third party plaintiff	Gregory M Culet
0/27/2006	Notice of Service Re: Discovery	Gregory M Culet
0/31/2006	Hearing result for Jury Trial held on 10/31/2006 09:30 AM: Hearing Vacated 7 day	Gregory M Culet
	Hearing result for Jury Trial held on 11/06/2006 09:30 AM: Hearing Vacated 7 day	Gregory M Culet
	Hearing Scheduled (Jury Trial 05/14/2007 09:00 AM)	Gregory M Culet
	Hearing Scheduled (Jury Trial 05/21/2007 09:00 AM) jury trial cont	Gregory M Culet
	Hearing Scheduled (Pre Trial 04/05/2007 08:30 AM)	Gregory M Culet
1/1/2006	Notice Of Hearing-April 5,2007 and May 14, 2007	Gregory M Culet
1/17/2006	First Amended Notice Of Taking Deposition Duces tecum of Tom Beltman	Gregory M Culet
	First amended Notice Of Taking Deposition Duces tecum of Stan Beltman	Gregory M Culet
1/30/2006	Notice Of Service	Gregory M Culet
1/19/2007	Amended Notice Of Taking Deposition Duces tecum of Dennis Burke	Gregory M Culet
1/25/2007	Notice Of Service	Gregory M Culet
1/29/2007	Notice Of Service of a discovery document	Gregory M Culet
1/31/2007	Plaintiffs' second supplemental disclosure of expert witnesses	Gregory M Culet
2/1/2007	Request for entry of land (fax)	Gregory M Culet
2/21/2007	Third party defendant Standley's memorandum in support of motion for summary judgment	Gregory M Culet
	Third party defendant Standley's motion for summary judgment	Gregory M Culet
	Affidavit of sounsel in support of third party defendant Standley's motion for summary judgment	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
	Hearing Scheduled (Motion Hearing 03/21/2007 01:30 AM)	Gregory M Culet
3/7/2007	Affidavit of Jill Holinka in support of memorandum in opposition to third party defendant's motion for summary judgment	Gregory M Culet
	Memorandum in opposition to third party defendant's motion for summary judgment	Gregory M Culet
3/14/2007	Third party defendant standleys reply memo in support of motion for summary judgment	Gregory M Culet

Other Claims

Date		Judge
4/14/2007	Affidavit of Counsel in support of third party defendant standleys reply memo in support of motion for summary judgment	Gregory M Culet
4/21/2007	Houle's Motion for Summary Judgment to Dismiss first Amended Third-Party Complaint	Gregory M Culet
	Memorandum in Support of Houle's Motion for Summary Judgment to Dismiss First Amended Third-Party Complaint	Gregory M Culet
	Hearing result for Motion Hearing held on 03/21/2007 01:30 PM: Hearing Held	Gregory M Culet
4/23/2007	Notice Of Hearing 4-25-07 9:00 (fax)	Gregory M Culet
	Hearing Scheduled (Motion Hearing 04/25/2007 09:00 AM) Def 3rd party mo for sum judg	Gregory M Culet
4/30/2007	Supplemental brief in support of third-party defendant standley's motion for summary judgment	Gregory M Culet
	Affidavit of counsel in support of supplemental brief in support of third-party defendant standley's motion for summary judgment	Gregory M Culet
	Plaintiffs post hearing brief re: Third party defendants motion for summary judgment	Gregory M Culet
4/13/2007	Hearing Scheduled (Pre Trial 04/16/2007 08:30 AM)	Gregory M Culet
4/15/2007	Supplemental Reply in support of third-party def Standleys mo for sum judg (fax)	Gregory M Culet
4/16/2007	Plaintiffs' post-hearing brief re: third party defendant's motion for summary judgment	Gregory M Culet
	Plaintiffs' motion to strike affidavit of counsel in support of supplemental brief	Gregory M Culet
	Notice Of Hearing 4-25-07	Gregory M Culet
4/19/2007	Amended Notice Of Hearing 4-25-07	Gregory M Culet
	Plt Witness & Exhibit List (fax)	Gregory M Culet
4/13/2007	Objection and Oppostion to Defendants Houles Late filed motion for Summary Judgment and Request for Attorneys Fees	Gregory M Culet
4/16/2007	Hearing result for Pre Trial held on 04/16/2007 08:30 AM: Plan Denied ruling on motion for summary judgment	Gregory M Culet
4/17/2007	Hearing Scheduled (Motion Hearing 05/07/2007 09:00 AM)	Gregory M Culet
	Hearing Scheduled (Conference - Telephone 05/10/2007 08:30 AM)	Gregory M Culet
4/19/2007	Notice Of Service x 2	Gregory M Culet
	Order for Dismissal with prejudice as to plaintiff Ludin Salinas only	Gregory M Culet
4/20/2007	Third-Party defendant Standley trenching, Inc., d/b/a Standley & Co.'s disclosure of trial witnesses	Gregory M Culet
	Third-party defendant Standley trenching, Inc. d/b/a Standley & Co.'s pre-trial momorandum	Gregory M Culet
	Third-party Defendant standley trenching, Inc., d/b/a standley & Co.'s disclosure of trial exhibits	Gregory M Culet
	Plaintiffs' Pre-trial Statement	Gregory M Culet
	Plaintiffs' witness and exhibit list (4-20-07)	Gregory M Culet

Other Claims

ate		Judge
/23/2007	Houle's Pre-trial Memorandum (fax)	Gregory M Culet
	Houle's designation of witness and exhibit list (fax)	Gregory M Culet
/24/2007	Hearing result for Motion Hearing held on 04/25/2007 09:00 AM: Hearing Vacated Def 3rd party mo for sum judg	Gregory M Culet
/25/2007	Hearing Scheduled (Motion Hearing 04/25/2007 09:00 AM)	Gregory M Culet
	Hearing result for Motion Hearing held on 04/25/2007 09:00 AM: Hearing Held	Gregory M Culet
/26/2007	Notice of ruling	Gregory M Culet
/27/2007	Motion to reconsider Order Granting Defendants (Standley) Motion for Summary Judgment entered on March 18, 2005	Gregory M Culet
	Affidavit of Kevin E Dinius in Support of Motion to reconsider Order Granting Defendants (Standley) Motion for Summary Judgment entered on March 18, 2005	Gregory M Culet
	Motion for an Order to Shorten Time	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
/30/2007	Order determining predominant factor of contract	Gregory M Culet
	Third-Party defendant Standley Trenching, Inc. dba Standley & Co.'s motion in limine	Gregory M Culet
	Third-Party defendant Standley Trenching, Inc. dba Standley & Co.'s Memorandum in support of its motion in limine	Gregory M Culet
	Affidavit of counsel in support of third-party defendant Standley & Co.'s motion in limine	Gregory M Culet
	Notice Of Hearing 5-7-07	Gregory M Culet
	Order on pretrial conference	Gregory M Culet
	Order on summary judgment	Gregory M Culet
	Civil Disposition entered for Summary Judgment ONLY Beltman Construction, Inc., Defendant; J Houle & Fils, Defendant; Standley Trenching, Defendant; Standley, Kurt, Defendant; Standley, Scott, Defendant; Degroot, Charles Jay, Plaintiff. order date: 4/30/2007	Gregory M Culet
5/1/2007	Order to shorten time DENIED see order	Gregory M Culet
	Third-Party Defendant Standley Trenching, Inc. d/b/a Standley & co.'s Motion to Reconsider Order Partially Denying Motion for Summary Judgment (fax)	Gregory M Culet
	Motion to Shorten Time for Hearing (fax)	Gregory M Culet
	Motion and Memorandum for an Order Certifying as Final the Courts Order Granting Def Standleys Motion for summary Judgment entered on 3/18/2005	Gregory M Culet
	Notice Of Hearing	Gregory M Culet
	Amended Motion for an Order to Shorten Time	Gregory M Culet
5/2/2007	third party defendant standley trenching supplement motion to reconsider order partially denying motion for summary judgment (fax)	Gregory M Culet
	Notice Of Hearing 05/07/2007	Gregory M Culet

Other Claims

Date		Judge
3/2007	3rd party def response to motion to reconsider order granting defs motion summary judgment	Gregory M Culet
4/2007	Memorandum in opposition to third party defendant's motion to reconsider order partially denying motion for summary judgment	Gregory M Culet
7/2007	houle's proposed jury instructions	Gregory M Culet
	Hearing result for Motion Hearing held on 05/07/2007 09:00 AM: Hearing Held motin in limine/ motin to shorten time	Gregory M Culet
8/2007	Third-party defendant Standley Trenching, Inc. proposed jury instructions	Gregory M Culet
9/2007	Affidavit of Kevin Dinius in support of plaintiffs' objection and response to Standley Trenching Inc.'s motion in limine	Gregory M Culet
	Objection and response to standley trenching Inc.'s motion in limine	Gregory M Culet
10/2007	Hearing result for Conference - Telephone held on 05/10/2007 08:30 AM: Hearing Held	Gregory M Culet
	Plaintiffs' Proposed Jury Instructions as to Defendant J. Houle & Fils, Inc.	Gregory M Culet
11/2007	Third-Party Defendant Standley Trenching, Inc., d/b/a Standley & Co.'s Disclosure of Trial Exhibits (fax)	Gregory M Culet
	Plaintiffs' Amended Proposed Jury Instructions	Gregory M Culet
14/2007	Plaintiff's exhibit list (fax)	Gregory M Culet
	Hearing result for Jury Trial held on 05/14/2007 09:00 AM: Hearing Vacated	Gregory M Culet
	Hearing result for Jury Trial held on 05/21/2007 09:00 AM: Hearing Vacated jury trial cont	Gregory M Culet
18/2007	Defendant Houle's Motion for summary judgment in case cv01-7777	Gregory M Culet
	Memorandum in support of defendant Houle's motion for summary judgment in case cv01-7777	Gregory M Culet
	Notice Of Hearing on defendant Houle's motion for summary judgment	Gregory M Culet
	Hearing Scheduled (Motion Hearing 06/18/2007 09:00 AM) summary Judgment	Gregory M Culet
5/2007	Memorandum in opposition to defendant Houle's motion for summary judgment	Gregory M Culet
	Affidavit of Kevin Dinius in support of Plaintiffs opposition to defendant Houle's motion for summary judgment	Gregory M Culet
11/2007	Replly memorandum in support of defendant Houle's motion for summary judgment in case CV 01-7777	Gregory M Culet
19/2007	Hearing result for Motion Hearing held on 06/18/2007 09:00 AM: Motion Held summary Judgment	Gregory M Culet
	Motion Denied	Gregory M Culet
22/2007	Transcript Filed- Houle's motion for summary judgment	Gregory M Culet
24/2007	Order of Dismissal of claims against def Houle & Fils Inc with prej in case Cv01-7777	Gregory M Culet
5/2007	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Fischer, Julie Klein (attorney for Degroot, Charles Jay) Receipt number: 0264755 Dated: 9/5/2007 Amount: \$15.00 (Check) For: Degroot Charles Jay (plaintiff)	Gregory M Culet

Other Claims

Date		Judge
5/5/2007	Bond Posted - Cash (Receipt 264763 Dated 9/5/2007 for 100.00) Clerks record	Gregory M Culet
	Appealed To The Supreme Court	Gregory M Culet
	Notice of appeal for Plt	Gregory M Culet
0/1/2007	SC-Order Conditionally Dismissing Appeal	Gregory M Culet
0/15/2007	Stipulation to vacate trial setting (fax)	Gregory M Culet
0/24/2007	S C - Order Dismissing Appeal	Gregory M Culet
0/25/2007	Substitution Of Counsel for Def/3rd party def	Gregory M Culet
1/16/2007	Remittitur	Gregory M Culet
1/28/2008	Notice of change of address for def/Standley	Gregory M Culet
1/6/2008	Notice of Attorney Fee Lien	Gregory M Culet
1/12/2008	Notice of Status Conference-8-28-08 (fax)	Gregory M Culet
	Hearing Scheduled (Conference - Status 08/28/2008 08:30 AM)	Gregory M Culet
1/21/2008	Substitution Of Counsel (fax)	Gregory M Culet
1/11/2008	Hearing Scheduled (Conference - Status 09/29/2008 08:30 AM) Telephonic	Gregory M Culet
	Chamber Minute	Gregory M Culet
1/29/2008	hearing held in chambers	Gregory M Culet
1/13/2008	Notice of telephone conference 12/05/2008 (fax)	Gregory M Culet
	Hearing Scheduled (Conference - Telephone 12/05/2008 08:30 AM)	Gregory M Culet
2/5/2008	Notice of Telephonic Status Conference 12-19-08 (fax)	Gregory M Culet
	Hearing Scheduled (Conference - Telephone 12/19/2008 08:30 AM)	Gregory M Culet
	Hearing result for Conference - Telephone held on 12/05/2008 08:30 AM: Hearing Vacated	Gregory M Culet
2/18/2008	Hearing result for Conference - Telephone held on 12/19/2008 08:30 AM: Hearing Vacated-parties are reviewing a stipulation submitted by Ms. Fisher and requested that the hearing be vacated at this time allowing the parties time to review the stipulation presented on short notice.	Gregory M Culet
1/28/2009	Stipulation for I.A.R. 12 Permissive Appeal	Gregory M Culet
1/3/2009	Order Approving Rule 12 Appeal by Permission	Gregory M Culet
1/26/2009	Notice of Substitution Of Counsel-Kevin Dinius (Dinius Law for Morrow Dinius)	Gregory M Culet
1/18/2009	Notice of telephonic status conference 08/26/2009 (fax)	Gregory M Culet
	Hearing Scheduled (Conference - Telephone 08/26/2009 08:30 AM)	Gregory M Culet
1/10/2009	Hearing result for Conference - Telephone held on 08/26/2009 08:30 AM: Hearing Held	Gregory M Culet
1/21/2009	Order Approving Rule 12 Appeal By Permission	Gregory M Culet
1/1/2010	Motion to reconsider (fax)	Gregory M Culet
	Notice Of Hearing 03/04/2010 (fax)	Gregory M Culet
	Hearing Scheduled (Motion Hearing 03/04/2010 09:00 AM) pltf's motn reconsider	Gregory M Culet

Other Claims

ate		Judge
/11/2010	Hearing Scheduled (Motion Hearing 04/01/2010 09:00 AM) pltf's motn reconsider	Gregory M Culet
	Amended Notice of Hearing 04/01/2010 (fax)	Gregory M Culet
/25/2010	Standley Trenching, Inc's Memorandum in Opposition to Plaintiffs' Motion to Reconsider March 18, 2005 Order (fax)	Gregory M Culet
/29/2010	Houle's joinder in standley's memorandum in opposition to pltf's motion to reconsider (fax)	Gregory M Culet
/1/2010	Hearing result for Motion Hearing held on 04/01/2010 09:00 AM: District Court Hearing Held Court Reporter: Debora Kreidler Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing held on 04/01/2010 09:00 AM: Hearing Held pltf's motn reconsider	Gregory M Culet
	Hearing result for Motion Hearing held on 04/01/2010 09:00 AM: Motion Denied pltf's motn reconsider	Gregory M Culet
	Hearing Scheduled (Conference - Status 04/07/2010 01:30 PM) via telephone	Gregory M Culet
/7/2010	Hearing result for Conference - Status held on 04/07/2010 01:30 PM: District Court Hearing Held Court Reporter: Debora Kreidler Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Conference - Status held on 04/07/2010 01:30 PM: Hearing Held via telephone	Gregory M Culet
	Hearing result for Conference - Status held on 04/07/2010 01:30 PM: Continued via telephone	Gregory M Culet
	Hearing Scheduled (Conference - Status 09/02/2010 01:30 PM)	Gregory M Culet
/3/2010	Stipulation for I.A.R. 12 Permissive Appeal	Gregory M Culet
/4/2010	Order Denying Motn to Reconsider	Gregory M Culet
	Order Approving Rule 12 Appeal by Permission	Gregory M Culet
/15/2010	S C - Order Denying Motion for Permission to Appeal	Gregory M Culet
/12/2010	Request For Trial Setting (fax)	Gregory M Culet
/18/2010	Response To Request For Trial Setting (fax)	Gregory M Culet
/19/2010	Response To Request For Trial Setting	Gregory M Culet
	Counterclaimant Standley Trenching inc DBA Standley & Co's Response to Request for Trial Setting	Gregory M Culet
/2/2010	Hearing result for Conference - Status held on 09/02/2010 01:30 PM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Conference - Status held on 09/02/2010 01:30 PM: Hearing Held telephonic	Gregory M Culet
	Hearing Scheduled (Pre Trial 09/07/2011 08:30 AM) by telephone	Gregory M Culet

Other Claims

Date		Judge
4/2/2010	Hearing Scheduled (Jury Trial 10/17/2011 09:00 AM)	Gregory M Culet
4/15/2010	Order on status conference	Gregory M Culet
10/14/2010	Stipulation for scheduling and planning (fax)	Gregory M Culet
	Stipulation for scheduling and planning (fax)	Gregory M Culet
4/19/2011	Stipulation for Entry of Order Vacating and RE-Setting Jury Trial (fax)	Gregory M Culet
4/27/2011	Notice of telephone status Conference 5-18-11 8:30 am (Fax)	Gregory M Culet
	Hearing Scheduled (Conference - Status 05/18/2011 08:30 AM) telephonic Status Conference	Gregory M Culet
4/18/2011	Hearing result for Jury Trial held on 10/17/2011 09:00 AM: Hearing Vacated	Gregory M Culet
	Hearing result for Pre Trial held on 09/07/2011 08:30 AM: Hearing Vacated by telephone	Gregory M Culet
	Hearing result for Conference - Status held on 05/18/2011 08:30 AM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Conference - Status held on 05/18/2011 08:30 AM: Hearing Held telephonic Status Conference	Gregory M Culet
	Hearing Scheduled (Jury Trial 03/19/2012 09:00 AM) 1st Setting	Gregory M Culet
	Hearing Scheduled (Pre Trial 02/21/2012 08:30 AM) by telephone	Gregory M Culet
	Hearing Scheduled (Motion Hearing 07/05/2011 09:30 AM) Motion for Summary Judgment	Gregory M Culet
4/27/2011	Standley Trenching Incs Motion in Limine	Gregory M Culet
	Standley Trenching Incs Memorandum in Support of Motion in Limine	Gregory M Culet
	Standley Trenching Incs Motion for Partial Summary Judgment	Gregory M Culet
	Affidavit of Michael Sasser in Support of Standley Trenching Incs Motion for Partial Summary Judgment	Gregory M Culet
	Standley Trenching Incs Memorandum in Support of Motion for Partial Summary Judgment	Gregory M Culet
	Notice Of Hearing 7-5-11	Gregory M Culet
4/1/2011	Order Setting Case for trial & PT	Gregory M Culet
4/8/2011	Stipulation for Scheduling and Planning (fax)	Gregory M Culet
4/9/2011	Amended Notice of Hearing 9-7-11 (fax)	Gregory M Culet
	Hearing result for Motion Hearing held on 07/05/2011 09:30 AM: Hearing Vacated Motion for Summary Judgment	Gregory M Culet
	Hearing Scheduled (Motion Hearing 09/07/2011 09:30 AM) standley trenchings motn for partial summ judg and motn in limine	Gregory M Culet
4/24/2011	Plnt's Opposition to Defn Standley Trenching, Inc's Motion for Partial Summary Judgment	Gregory M Culet
	Affidavit of Michael J Hanby II in Support Plnt's Opposition to Defn Standley Trenching, Inc's Motion for Partial Summary Judgment	Gregory M Culet

Other Claims

Date		Judge
3/31/2011	Plaintiffs Objection to Defendant Standley Trenching Incs Motion in Limine (fax)	Gregory M Culet
	Standley Trenching Incs Reply Memorandum in Support of Motion for Partial Summary Judgment (fax)	Gregory M Culet
4/2/2011	Affidavit of M Michael Sasser in support of Standley Trenching Inc Motion in Limine (fax)	Gregory M Culet
	Standley Trenching Incs Reply Memorandum in support of Its Motion in Limine (fax)	Gregory M Culet
4/7/2011	Hearing result for Motion Hearing scheduled on 09/07/2011 09:30 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 09/07/2011 09:30 AM: Motion Held standley trenchings motn for partial summ judg and motn in limine	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 09/07/2011 09:30 AM: Motion Granted-regarding express warranty	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 09/07/2011 09:30 AM: Motion Denied-regarding claim for breach of covenant of good faith and fair dealing and breach of implied warranty of fitness for a particular purpose	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 09/07/2011 09:30 AM: Motion Granted -regarding rescission	Gregory M Culet
	Hearing Scheduled (Conference - Telephone 10/21/2011 08:30 AM) Oral Ruling on Motion in Limine and issue of indemnification	Gregory M Culet
4/13/2011	Standley Trenching Incs Notice of Amendment of its prior Motion for Partial Summary Judgment to a Complete Motion for Summary Judgment Against Beltman Construction (fax)	Gregory M Culet
4/16/2011	Supplemental Briefing in Opposition to Motion in Limine (fax)	Gregory M Culet
4/19/2011	Affidavit of M Michael Sasser in support of Standley Trenching Incs Supplemental Memorandum regarding its Motion for Summary Judgment and Motion in Limine (Indemnification Issue)	Gregory M Culet
	Standley Trenching Incs Supplemental Memorandum in support of its Motion for Summary Judgment and Motion in Limine (Indemnification Issue)	Gregory M Culet
10/21/2011	Hearing result for Jury Trial scheduled on 03/19/2012 09:00 AM: Hearing Vacated 1st Setting	Gregory M Culet
	Hearing result for Pre Trial scheduled on 02/21/2012 08:30 AM: Hearing Vacated by telephone	Gregory M Culet
	Hearing result for Conference - Telephone scheduled on 10/21/2011 08:30 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Conference - Telephone scheduled on 10/21/2011 08:30 AM: Hearing Held Oral Ruling on Motion in Limine and issue of indemnification	Gregory M Culet

Other Claims

ate		Judge
0/21/2011	Hearing result for Conference - Telephone scheduled on 10/21/2011 08:30 AM: Motion Denied-regarding equitable indemnity	Gregory M Culet
	Hearing result for Conference - Telephone scheduled on 10/21/2011 08:30 AM: Motion Granted-regarding all other issues	Gregory M Culet
1/8/2011	Order Granting Standley Trenching Inc Complete Motion for Summary Judgment as to all claims and cause of Action Stated in Beltman Constructions Incs third-Party Complaint	Gregory M Culet
	Judgment (3rd Party Compalint of Beltman Construction is Dismissed with Prej and that Judgment is entered in favor of 3rd PArty Def Standley Trenching	Gregory M Culet
	Civil Disposition entered for: J Houle & Fils, Defendant; Standley Trenching, Defendant; Standley, Kurt, Defendant; Standley, Scott, Defendant; Degroot, Charles Jay, Plaintiff. Filing date: 11/8/2011	Gregory M Culet
	Case Status Changed: Closed	Gregory M Culet
1/16/2011	Notice of appeal	Gregory M Culet
	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Dinius, Kevin Receipt number: 0149086 Dated: 11/16/2011 Amount: \$101.00 (Check) For: Degroot, Charles Jay (plaintiff)	Gregory M Culet
	Appealed To The Supreme Court	Gregory M Culet
	Case Status Changed: Reopened	Gregory M Culet
	Bond Posted - Cash (Receipt 149087 Dated 11/16/2011 for 100.00) (CLERK'S RECORD)	Gregory M Culet
1/21/2011	Counterclaimants Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim	Gregory M Culet
	Affidavit of Robert D Lewis in Support of Counterclaimants Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim	Gregory M Culet
	Counterclaimants Second Memorandum of Attorneys Fees	Gregory M Culet
1/22/2011	Defendant/Third Party Defendant Standley Trenching, Inc's Motion for Costs and Attorney Fees	Gregory M Culet
	Defendant/Third Party Defendant Standley Trenching, Inc's Memorandum of Costs and Attorney Fees	Gregory M Culet
	Defendant Standley Supplemental Memorandum of Costs and Attorney Fees	Gregory M Culet
	Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc's Memorandum of Costs and Attorney Fees	Gregory M Culet
	Affidavit of Michael Kelly in Support of Standley Trenching, Inc's Supplemental Memorandum of Costs and Attorney Fees	Gregory M Culet
	Defendant/Third Party Defendant Standley Trenching Inc's Memorandum of Law in Support of Motion for Costs and Attorney Fees	Gregory M Culet
1/23/2011	Affidavit of William A Mccurdy	Gregory M Culet
	Motion for Reimbursement of Costs and Attorney Fees	Gregory M Culet
1/29/2011	Respondent /Counterclaimant Standley Trenching Incs Request for Additional Transcript and record (fax	Gregory M Culet
1/30/2011	Def Request for Additional Transcript & Record 20	Gregory M Culet

Other Claims

Date		Judge
2/1/2011	Objection to Standley trenching Incs Motion for Costs & Attorney Fees (fax	Gregory M Culet
2/5/2011	Objection to J Houle Fils Incs Motion for Reimbursement of costs and Attorney fees (fax	Gregory M Culet
	Bond Posted - Cash (Receipt 152338 Dated 12/5/2011 for 300.00) (\$100 for Clerk's Record \$200 for Reporters Transcript	Gregory M Culet
	Notice Of Hearing 12-20-11	Gregory M Culet
	Hearing Scheduled (Motion Hearing 12/20/2011 02:00 PM) Standley Trenchings renewed motn for award of prejudgment interest and entry of amended judg	Gregory M Culet
	Standley Trenching Inc's Supplemental Memorandum supporting an award of fees (fax	Gregory M Culet
2/6/2011	Notice Of Hearing 12-20-11	Gregory M Culet
	S C - Order Re: Amended Notice of Appeal	Gregory M Culet
	Notice Of Hearing 12-20-11 (fax	Gregory M Culet
2/7/2011	Notice of Payment of Estimated Costs for Additional Records and Receipt Amended Notice of Appeal	Gregory M Culet
	Amended Notice of Appeal	Gregory M Culet
2/8/2011	Notice Of Service (fax	Gregory M Culet
2/13/2011	Objection to Defendant /Third Party Def /Counterclaimant Standley Trenching Incs Renewed Motion for award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim(fax	Gregory M Culet
2/14/2011	Supplemental Affidavit of M michael Sasser in support of Standley Trenching Inc's Memorandum of costs and Attorney fees (fax	Gregory M Culet
	Defendant/Third Party Def Standley Trenching Inc's Reply Memorandum to Plaintiffs Objection to Motion for Costs and Attorney Fees (fax	Gregory M Culet
2/16/2011	Affidavit from William A Mccurdy in Support of Motion for Reimbursement (fax)	Gregory M Culet
	Objection to Defendant/Third Party Defendant/Supplemental Objection to J Houle & Fils Incs Motion for Reimbursement (fax)	Gregory M Culet
2/20/2011	Hearing result for Motion Hearing scheduled on 12/20/2011 02:00 PM: District Court Hearing Held	Gregory M Culet
	Court Reporter: Laura Whiting	
	Number of Transcript Pages for this hearing estimated:-less than 100 pages Plt objection to Mo for reimbursemet ,Standley Trenchings renewed motn for award of prejudgment interest and entry of amended judg/standley trenchings motn for costs and fees	
	Hearing result for Motion Hearing scheduled on 12/20/2011 02:00 PM: Motion Held Plt objection to Mo for reimbursemet ,Standley Trenchings renewed motn for award of prejudgment interest and entry of amended judg/standley trenchings motn for costs and fees	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 12/20/2011 02:00 PM: Motion Denied-re: Houle Plt objection to Mo for reimbursemet ,Standley Trenchings renewed motn for award of prejudgment interest and entry of amended judg/standley trenchings motn for costs and fees	Gregory M Culet

Other Claims

Date		Judge
2/20/2011	Hearing result for Motion Hearing scheduled on 12/20/2011 02:00 PM: Motion Granted Plt objection to Mo for reimbursemet ,Standley Trenchings renewed motn for award of prejudgment interest and entry of amended judg/standley trenchings motn for costs and fees	Gregory M Culet
2/27/2011	Amended Judgment on Counterclaim \$64,132.81 Civil Disposition entered for: J Houle & Fils, Defendant; Standley Trenching, Defendant; Standley, Kurt, Defendant; Standley, Scott, Defendant; Degroot, Charles Jay, Plaintiff. Filing date: 12/27/2011	Gregory M Culet Gregory M Culet
2/29/2011	Order on Costs and Attorney Fees \$10,710.28	Gregory M Culet
2/30/2011	Order Denying Defendant J Houle Fils Inc's Motion for Reimbursement of Costs and Attorney Fees	Gregory M Culet
/3/2012	Second Amended Notice of Appeal (fax	Gregory M Culet
/13/2012	Third Amended Notice of Appeal (fax	Gregory M Culet
/17/2012	Change Assigned Judge (batch process) Amended Judgment for Costs and Attorney Fees \$180,558.78	James C. Morfitt
/23/2012	Fourth Amended Notice of Appeal (fax	Molly J Huskey
/27/2012	Notice of Agreement to Stay Execution Bond Converted (Transaction number 1126 dated 3/27/2012 amount 200.00)	Molly J Huskey Molly J Huskey

ORIGINAL

Julie Klein Fischer, ISB #4601
Kevin E. Dinius, ISB #5974
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
jkl@whitepeterson.com

Attorneys for Plaintiffs

FILED
A.M. 4:45 P.M.
SEP 12 2001
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
)
)
Plaintiffs,)
)
-vs-)
)
KURT STANDLEY, and SCOTT)
STANDLEY d/b/a STANDLEY & CO.,)
)
Defendants.)

CASE NO. CV 2001-7777

COMPLAINT AND DEMAND
FOR JURY TRIAL

Fee: \$77.00
Fee Category: A-1

COME NOW, CHARLES DeGROOT, and DeGROOT DAIRY, LLC (hereinafter referred to as "Plaintiffs"), the above-named Plaintiffs, and for cause of action against the Defendants, KURT STANDLEY and SCOTT STANDLEY d/b/a/ STANDLEY & CO. (hereinafter collectively referred to as "Defendants"), COMPLAIN AND ALLEGE as

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

follows:

1. Plaintiff, Charles DeGroot at all times relevant herein was a resident of Canyon County, Idaho.
2. Plaintiff, DeGroot Farms, LLC is an Idaho LLC with its principal place of business in Canyon County Idaho.
3. Plaintiff DeGroot Farms, LLC and Plaintiff Charles DeGroot are “Buyers” within the meaning of the Idaho Commercial Code § 28-2-103.
4. Plaintiffs own and operate a 2,000 head dairy in Canyon County, Idaho.
5. Defendants, Kurt Standley and Scott Standley, under the assumed business name of Standley & Co., offer services and sell manure handling equipment for dairy operations throughout Idaho, including Canyon County, Idaho.
6. Defendants are “Sellers” within the meaning of Idaho Commercial Code § 28-2-103.
7. In about July or August 1999, Beltman Construction, Inc. a Washington company (“Beltman”) subcontracted the engineering, design and installation of manure handling equipment to Defendants for Plaintiffs’ dairy being constructed in Canyon County, Idaho.
8. The equipment and products sold by Defendants to Plaintiffs are “Goods” within the meaning of Idaho Commercial Code § 28-2-105 and/or 28-2-107
9. Beltman is a “Buyer” within the meaning of Idaho Commercial Code § 28-

COMPLAINT AND DEMAND FOR JURY TRIAL - 2

2-103.

10. Beltman collected from Plaintiffs and in turn paid Defendants in excess of \$100,000 for engineering, designing and installing manure handling equipment at Plaintiffs' dairy.

11. At all relevant times Plaintiffs and Beltman relied upon Defendants' knowledge, representations, expertise and experience to design, engineer and install a properly functioning manure handling system for Plaintiffs' Canyon County dairy.

12. Plaintiffs were the intended beneficiary of the contract between Beltman and Defendants.

13. Defendants were aware of the intended purpose of the manure handling system.

14. Following the installation of the manure handling equipment by Defendants, Plaintiffs hired Defendants to modify and renovate the manure handling equipment that Defendants had installed. The amount charged for said work exceeds \$35,000.

15. The manure handling equipment installed at the Plaintiffs' dairy by Defendants is inadequate, does not function as intended, and is not fit for its intended use.

COUNT ONE
Breach of Contract

16. Plaintiffs incorporate and reallege by reference all the allegations contained

COMPLAINT AND DEMAND FOR JURY TRIAL - 3

in paragraphs 1 through 15 above.

17. Plaintiffs were the intended beneficiary to the contract between Beltman Construction and Defendants for the engineer, design and installation of manure handling equipment at the Plaintiffs' dairy in Canyon County, Idaho.

18. Plaintiffs paid Defendants, through Beltman, in excess of \$100,000 for the manure handling equipment and services of Defendants.

20. Defendants failed to provide the equipment and services contracted and as such materially breached its agreement with Beltman and Plaintiffs.

21. Plaintiffs have been required to spend over \$35,000 repairing, renovating and modifying the defective/inadequate manure handling equipment installed by Defendants, which amount is in excess of the total cost of the improperly functioning manure handling system. Despite Plaintiffs efforts to renovate and repair the system installed by Defendants, the system still does not function properly and/or does not perform as contacted.

22. Plaintiffs have suffered consequential damages as a direct and proximate result of Defendants' breach in an exact amount to be proven at trial.

23. As a direct result of Defendants' breach of contract, Plaintiffs suffered damages in an amount to be proven at trial, but which amount exceeds \$150,000.

24. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and

costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT TWO

Rescission

25. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 24 above.

26. Defendants designed and selected the materials/equipment for, and installed manure handling equipment at the Plaintiffs' Canyon County, Idaho dairy during the months of August, September, October and November, 1999.

27. The design and equipment supplied by Defendants was inadequate for the size of Plaintiffs' dairy and does not function properly.

28. Plaintiffs are entitled to revoke their acceptance of the insufficient/defective manure handling equipment provided by Defendants pursuant to Idaho Commercial Code § 28-2-608.

29. Plaintiffs notified Defendants on June 18, 2001, that Plaintiffs were revoking acceptance of said manure handling equipment, and demanding a return of Plaintiffs' purchase money pursuant to the Idaho Commercial Code 28-2-608.

30. Defendants have refused to return Plaintiffs' purchase money for the insufficient/defective manure handling equipment.

31. As a result of Defendants' design and installation of insufficient/defective manure handling equipment at the Plaintiffs' dairy, and Defendants' refusal to accept Plaintiffs' rescission of said equipment, Plaintiffs have suffered damages in the amount

of the purchase price of the manure handling equipment.

32. In addition to the damages referenced in paragraph 30, Plaintiffs also have suffered incidental and consequential damages in excess of \$35,000 for costs associated with modifying and renovating the defective/insufficient manure handling equipment in an attempt to make the same operational.

33. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT THREE
Breach of Warranties

34. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 33 above.

35. Plaintiffs and the general contractor, Beltman Construction, requested that Defendants engineer, design, select equipment for and install a manure handling system for a 2000 plus head dairy operation.

36. Defendants represented to Plaintiffs and Beltman Construction that it had the expertise and knowledge to design, construct and install such a system, and represented that it would provide the equipment for the same.

37. Plaintiffs and Beltman relied upon Defendants' expertise, knowledge and experience in designing, engineering and initialing the manure handling system.

38. The design and equipment prepared, constructed and installed by

Defendants is insufficient for managing and disposing of manure from a 2,000 head dairy operation.

39. Defendants were aware of the intended use and purpose of the manure handling system.

40. The equipment installed by Defendants at the Plaintiffs' dairy does not function or operate as intended and is not merchantable.

41. Defendants, having reason to know of the intended purpose of the manure system and Plaintiffs' reliance on Defendants' skill and judgment to select and furnish a suitable system impliedly warranted the system would be fit for the intended purpose.

42. Defendants breached the implied warranty of fitness for a particular purpose pursuant to Idaho Commercial Code § 28-2-315.

43. Defendants breached the implied warranty of merchantability pursuant to Idaho Commercial Code § 28-2-314.

44. Defendants by representing that its products and services would be sufficient to handle manure disposal for a 2,000 head dairy operation, breached the warranty of affirmation or promise pursuant to Idaho Commercial Code § 28-2-313.

45. Plaintiffs were the beneficiaries, and/or third-party beneficiaries of the warranties referred to in this Count III.

46. As a direct result of Defendants' breach of warranties, Plaintiffs have suffered damages in an amount exceeding \$150,000, including incidental and

COMPLAINT AND DEMAND FOR JURY TRIAL - 7

consequential damages, the exact amount to be proven at trial.

47. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT FOUR

Breach of Implied Covenant of Good Faith and Fair Dealing

48. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 47 above.

49. The covenant of good faith and fair dealing is implied in the contract between Plaintiffs and/or Beltman and Defendants.

50. The covenant requires Defendants to act in good faith, with fairness and with honesty-in-fact toward Plaintiffs. As a further result of the acts, omissions and occurrences alleged herein above, Defendants violated, nullified and/or significantly impaired the benefits provided to Plaintiffs under contractual relationship and thus materially breached its implied obligation to act in good faith, fairness and honesty-in-fact toward Plaintiffs.

51. As a direct and proximate result of Defendants' conduct, as alleged herein above, Plaintiffs suffered damages in the form of lost profits, lost opportunity, and other special and general damages in an exact amount to be proven at trial in a sum in excess of \$10,000.

COMPLAINT AND DEMAND FOR JURY TRIAL - 8

ATTORNEYS FEES

Plaintiffs have been required to retain the law firm of White Peterson to prosecute this action and is entitled to recover attorney fees and costs incurred pursuant to Idaho Code §§12-120 and 12-121.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial composed of no less than twelve (12) persons on all issues so triable, pursuant to Idaho Rule of Civil Procedure 38(b).

PRAYER

WHEREFORE, Plaintiffs pray for Judgment, Order and Decree of this Court as follows:

1. For an award of damage to Plaintiffs, against Defendants for breach of contract in an amount to be proven at trial, but which amount exceeds \$150,000;
2. For an order reducing Plaintiffs' acceptance of the manure handling equipment from Defendants, and damages associated with Defendants' refusal to do the same, in an amount to be proven at trial;
3. For damages against Defendants for breach of the warranty of fitness for a particular purpose, breach of warranty of merchantability and breach of warranty of promise, in an amount to be proven at trial, but which amount exceeds \$150,000;
4. For an award of damages to Plaintiffs against Defendants for Defendants' breach of covenant of good faith and fair dealing in an amount to be proven at trial.

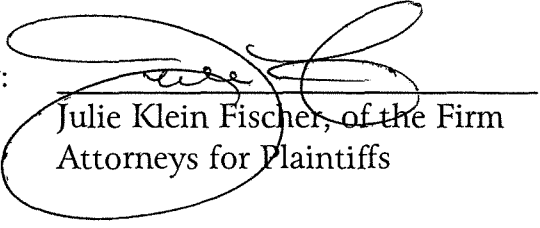
5. For an award of attorney's fees pursuant to Idaho Code 12-120, 12-121,
and other applicable law.

6. For such other relief as the Court deems appropriate and just.

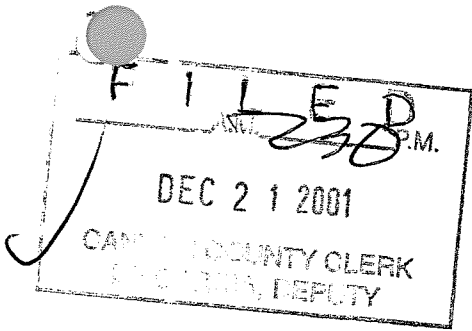
DATED this 12 day of September, 2001.

WHITE PETERSON

By:


Julie Klein Fischer, of the Firm
Attorneys for Plaintiffs

Julie Klein Fischer, ISB #4601
 Kevin E. Dinius, ISB #5974
 WHITE PETERSON
 Canyon Park at The Idaho Center
 5700 East Franklin Road, Suite 200
 Nampa, Idaho 83687
 Telephone: (208) 466-9272
 Facsimile: (208) 466-4405
 jkf@whitepeterson.com



Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
 FARMS, LLC,)

Plaintiffs,)

-vs-)

KURT STANDLEY, SCOTT)
 STANDLEY and STANDLEY)
 TRENCHING, INC., d/b/a STANDLEY)
 & CO., and J. HOULE & FILS, INC., a)
 Canadian corporation;)

Defendants.)

CASE NO. CV 2001-7777

FIRST AMENDED
 COMPLAINT AND DEMAND
 FOR JURY TRIAL

COME NOW, CHARLES DeGROOT, and DeGROOT FARMS, LLC (hereinafter referred to as "Plaintiffs"), the above-named Plaintiffs, and for cause of action against the

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

Defendants, KURT STANDLEY, SCOTT STANDLEY and STANDLEY TRENCHING, INC. d/b/a/ STANDLEY & CO. (hereinafter collectively referred to as "Standley"), and Defendant J. HOULE & FILS, INC. (hereinafter "Houle") COMPLAIN AND ALLEGE as follows:

1. Plaintiff, Charles DeGroot at all times relevant herein was a resident of Canyon County, Idaho.
2. Plaintiff, DeGroot Farms, LLC is an Idaho LLC with its principal place of business in Canyon County Idaho.
3. Plaintiff DeGroot Farms, LLC and Plaintiff Charles DeGroot are "Buyers" within the meaning of the Idaho Commercial Code § 28-2-103.
4. Plaintiffs own and operate a 2,000 head dairy in Canyon County, Idaho.
5. Defendants, Standley, under the assumed business name of Standley & Co., offer services and sell manure handling equipment for dairy operations throughout Idaho, including Canyon County, Idaho.
6. Defendant Houle is a Canadian Corporation, under information and belief, with its principal United States business being located in the State of Michigan.
7. Houle manufactures and sells manure handling equipment, which it distributes and sells throughout the United States, including Idaho.
8. Defendants Standley are "Sellers" within the meaning of Idaho Commercial Code § 28-2-103.

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 2

9. Defendant Houle is a "Seller" within the meaning of Idaho Commercial Code § 28-2-103.

10. In about July or August 1999, Beltman Construction, Inc. a Washington company ("Beltman") subcontracted the engineering, design and installation of manure handling equipment to Defendants Standley for Plaintiffs' dairy being constructed in Canyon County, Idaho.

11. The equipment and products sold by Defendants Standley to Plaintiffs are "goods" within the meaning of Idaho Commercial Code §§ 28-2-105 and/or 28-2-107. Said goods include without limitation "goods" manufactured by Houle.

12. Beltman and/or Plaintiffs is a "Buyer" within the meaning of Idaho Commercial Code § 28-2-103.

13. Beltman collected from Plaintiffs and in turn paid Defendants Standley in excess of \$100,000 for engineering, designing and installing manure handling equipment (including Houle equipment) at Plaintiffs' dairy.

14. At all relevant times Plaintiffs and Beltman relied upon Defendants' (Houle's and Standley's) knowledge, representations, expertise and experience to design, engineer and install a properly functioning manure handling system for Plaintiffs' Canyon County dairy.

15. Plaintiffs were the intended beneficiary of the contract between Beltman and Defendants Standley.

16. Defendants Standley and Houle were aware of the intended purpose of the manure handling system, including Houle equipment, used on Plaintiffs' dairy.

17. Some of the manure handling equipment installed by Defendants Standley, is manufactured by Defendant Houle.

18. Following the installation of the manure handling equipment by Defendant Standley, Plaintiffs hired Defendant Standley to modify and renovate the manure handling equipment that Standley had installed and some of which was manufactured by Houle. The amount charged for said "renovation" work exceeds \$35,000.

19. The manure handling equipment installed at the Plaintiffs' dairy by Defendant Standley is inadequate, does not function as intended, and is not fit for its intended use.

20. The manure handling equipment manufactured by Houle and installed at Plaintiffs' dairy does not function or work as intended.

COUNT ONE
Breach of Contract
(Defendants Standley)

21. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 20 above.

22. Plaintiffs were the intended beneficiary to the contract between Beltman Construction and Defendants Standley for the engineer, design and installation of manure handling equipment at the Plaintiffs' dairy in Canyon County, Idaho.

23. Plaintiffs paid Defendant Standley, through Beltman, in excess of \$100,000 for the manure handling equipment and services of Defendants Standley.

24. Defendants Standley failed to provide the equipment and services contracted and as such materially breached its agreement with Beltman and Plaintiffs.

25. Plaintiffs have been required to spend over \$35,000 repairing, renovating and modifying the defective/inadequate manure handling equipment installed by Defendants Standley, which amount is in excess of the total cost of the improperly functioning manure handling system. Despite Plaintiffs efforts to renovate and repair the system installed by Defendants Standley, the system still does not function properly and/or does not perform as contacted.

26. Plaintiffs have suffered consequential damages as a direct and proximate result of Defendants Standley's breach in an exact amount to be proven at trial.

27. As a direct result of Defendants Standley's breach of contract, Plaintiffs suffered damages in an amount to be proven at trial, but which amount exceeds \$150,000.

28. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT TWO

Rescission

(Defendants Standley & Houle)

29. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 28 above.

30. Defendants Standley designed and selected the materials/equipment for, and installed manure handling equipment at the Plaintiffs' Canyon County, Idaho dairy during the months of August, September, October and November, 1999.

31. Substantially all of the manure handling equipment installed at Plaintiffs' dairy by Defendants Standley was manufactured by Defendant Houle.

32. The design and equipment supplied/installed by Defendants Standley and manufactured by Defendant Houle was inadequate for the size of Plaintiffs' dairy and does not function properly.

33. Plaintiffs are entitled to revoke their acceptance of the insufficient/defective manure handling equipment provided by Defendants pursuant to Idaho Commercial Code § 28-2-608.

34. Plaintiffs notified Defendants Standley on June 18, 2001, that Plaintiffs were revoking acceptance of said manure handling equipment, and demanding a return of Plaintiffs' purchase money pursuant to the Idaho Code § 28-2-608.

35. Defendants Standley have refused to return Plaintiffs' purchase money for the insufficient/defective manure handling equipment.

36. As a result of Defendants Standley's design and installation of insufficient/defective manure handling equipment at the Plaintiffs' dairy, which defective equipment was manufactured by Defendant Houle, and Defendants Standley's refusal to accept Plaintiffs' rescission of said equipment, Plaintiffs have suffered damages in the amount of the purchase price of the manure handling equipment.

37. In addition to the damages referenced in the preceding paragraph, Plaintiffs also have suffered incidental and consequential damages in excess of \$35,000 for costs associated with modifying and renovating the defective/insufficient manure handling equipment in an attempt to make the same operational.

38. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT THREE
Breach of Warranties
(Defendants Standley and Houle)

39. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 38 above.

40. Plaintiffs and the general contractor, Beltman Construction, requested that Defendants Standley engineer, design, select equipment for and install a manure handling system for a 2000 plus head dairy operation.

41. Defendants Standley represented to Plaintiffs and Beltman Construction

that it had the expertise and knowledge to design, construct and install such a system, and represented that it would provide the equipment for the same.

42. Defendant Houle represented, through the sales of its products, that its manure handling equipment and goods were sufficient to perform manure disposal functions for dairies of all sizes.

43. Plaintiffs and Beltman relied upon Defendants Standley's expertise, knowledge and experience in designing, engineering and installing the manure handling system.

44. Plaintiffs and Beltman relied upon Defendant Houle's products to be sufficient and capable of performing the functions for which they are manufactured.

45. The design and equipment prepared, constructed and installed by Defendant Standley is insufficient for managing and disposing of manure from a 2,000 head dairy operation.

46. The equipment manufactured and designed by Houle, and installed by Standley is insufficient for managing and disposing of manure from a 2,000 head dairy operation.

47. Defendants Houle and Standley were aware of the intended use and purpose of the manure handling system and equipment.

48. The equipment manufactured by Defendant Houle and installed by Defendants Standley at the Plaintiffs' dairy does not function or operate as intended and

is not merchantable.

49. Defendants Standley, having reason to know of the intended purpose of the manure system and Plaintiffs' reliance on Defendants Standley's skill and judgment to select and furnish a suitable system impliedly warranted the system would be fit for the intended purpose.

50. Defendant Houle, having manufactured and sold manure handling equipment, and knowing the intended use of said equipment impliedly warranted the equipment would be fit for the intended purpose.

51. Defendants breached the implied warranty of fitness for a particular purpose pursuant to Idaho Commercial Code § 28-2-315.

52. Defendants breached the implied warranty of merchantability pursuant to Idaho Commercial Code § 28-2-314.

53. Defendants Standley, by representing that its products and services would be sufficient to handle manure disposal for a 2,000 head dairy operation, breached the warranty of affirmation or promise pursuant to Idaho Commercial Code § 28-2-313.

54. Defendant Houle, by holding out its products as sufficient to process manure from dairies of all sizes, breached the warranty of affirmation or promise pursuant to Idaho Commercial Code § 28-2-313.

55. Plaintiffs were the beneficiaries, and/or third-party beneficiaries of the warranties referred to in this Count III.

56. As a direct result of Defendants' breach of warranties, Plaintiffs have suffered damages, including incidental and consequential damages, in an amount exceeding \$150,000 the exact amount to be proven at trial.

57. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT FOUR

Breach of Implied Covenant of Good Faith and Fair Dealing (Defendants Standley)

58. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 57 above.

59. The covenant of good faith and fair dealing is implied in the contract between Plaintiffs and/or Beltman and Defendants Standley.

60. The covenant requires Defendant to act in good faith, with fairness and with honesty-in-fact toward Plaintiffs. As a further result of the acts, omissions and occurrences alleged herein above, Defendants Standley violated, nullified and/or significantly impaired the benefits provided to Plaintiffs under contractual relationship and thus materially breached its implied obligation to act in good faith, fairness and honesty-in-fact toward Plaintiffs.

61. As a direct and proximate result of Defendants Standley's conduct, as alleged herein above, Plaintiffs suffered damages in the form of lost profits, lost

opportunity, and other special and general damages in an exact amount to be proven at trial in a sum in excess of \$10,000.

62. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT FIVE

Violations of the Idaho Consumer Protection Act

(Defendants Standley and Houle)

63. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 62 above.

64. Defendants Standley sold goods and services to Plaintiffs, as the same are defined in the Idaho Consumer Protection Act, Idaho Code §§ 48-602(6) and (7).

65. Defendant Houle is the seller of goods, as defined in the Idaho Consumer Protection Act, Idaho Code § 48-602, which goods ultimately were purchased by Plaintiffs.

66. Defendants' conduct, including without limitation, representations to Plaintiff that the goods and services were of a particular quality and standard, constituted unfair and deceptive acts or practices in the conduct of trade and violated the Idaho Consumer Protection Act, Idaho Code §§ 48-601 *et seq.*

67. As a direct and proximate result of Defendants' conduct, as alleged

hereinabove, Plaintiffs suffered special and general damages, an exact amount to be proven at trial in a sum in excess of \$100,000.00, the exact amount to be proven at trial.

68. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120, 12-121 and 48-608(4).

ATTORNEYS FEES

Plaintiffs have been required to retain the law firm of White Peterson to prosecute this action and is entitled to recover attorney fees and costs incurred pursuant to Idaho Code §§12-120 and 12-121, 48-608 and any other applicable law.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial composed of no less than twelve (12) persons on all issues so triable, pursuant to Idaho Rule of Civil Procedure 38(b).

PRAYER

WHEREFORE, Plaintiffs pray for Judgment, Order and Decree of this Court as follows:

1. For an award of damage to Plaintiffs, against Defendants Standley for breach of contract in an amount to be proven at trial, but which amount exceeds \$150,000;
2. For an order allowing Plaintiffs' to rescind acceptance of the manure handling equipment from Defendants, and damages associated with Defendants' refusal

to allow the same, in an amount to be proven at trial;

3. For damages against Defendants for breach of the warranty of fitness for a particular purpose, breach of warranty of merchantability and breach of warranty of promise, in an amount to be proven at trial, but which amount exceeds \$150,000;

4. For an award of damages to Plaintiffs against Defendants Standley for breach of covenant of good faith and fair dealing in an amount to be proven at trial;

5. For an award of damages to Plaintiffs against Defendants for violations of the Idaho Consumer Protection Act in an amount to be proven at trial.

5. For an award of attorney's fees pursuant to Idaho Code §§ 12-120, 12-121, 48-601 *et seq.* and any other applicable law.

6. For such other relief as the Court deems appropriate and just.

DATED this 19 day of December, 2001.

WHITE PETERSON

By: 

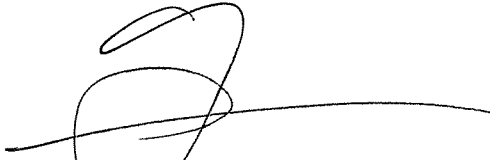
Julie Klein Fischer, of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2001, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

- US Mail
 - Overnight Mail
 - Hand Delivery
 - Facsimile
- No. _____

Kevin F. Trainor
STEPHAN, KVANVIG, STONE & TRAINOR
Post Office Box 83
Twin Falls, ID 83303-0083



for WHITE PETERSON

ts\Z:\Work\D\DeGroot Farms, LLC\Standley & Co. -\pleadings\1st amd complaint.wpd

STEPHAN, KVANVIG, STONE & TRAINOR
Kevin F. Trainor
P.O. Box 83
Twin Falls, Idaho 83303-0083
Telephone: 208-733-2721
Facsimile: 208-733-3619
ISB No. 1836
18069/ANS/lj
Attorney for Defendants Standley

FILED
A.M. / 5⁰ P.M.
FEB 22 2002
CANNON COUNTY CLERK
T. CRAWFORD, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON**

CHARLES DeGROOT; and DeGROOT)
FARMS, LLC,)
 Plaintiff,)
))
 vs.))
))
KURT STANDLEY, SCOTT STANDLEY)
and STANDLEY TRENCHING, INC.,)
d/b/a STANDLEY & CO.; and)
J. HOULE & FILS, INC., a)
Canadian corporation,)
))
 Defendants.)
_____)

CASE NO. CV 2001-7777

**VERIFIED ANSWER AND
COUNTERCLAIM**

Fee Category J8(b): \$8.00

Defendants, Kurt Standley, Scott Standley, and Standley
Trenching, Inc., d/b/a/ Standley & Co. (hereinafter "Standley"),
for their Answer allege as follows:

I.

First Defense

Standley denies all the allegation contained in the
Complaint except those specifically admitted herein.

II.

Standley admits the allegations set out in paragraphs 1,
6, 7, and 17.

III.

Standley does not have sufficient information to admit or deny the allegations complained in paragraphs 2, 3, 4, 11, 14, 15, 42, 43, 44, 47, 50, 54, and 65, and therefore denies the same.

IV.

Answering paragraphs 15, 22, 24, 59, and 60, Standley was not provided any contract attached to the Plaintiff's Complaint nor were any alleged particulars of any contract set out in Plaintiff's Complaint, and therefore denies the same. Standley further alleges, it had no contract with Plaintiff for the construction of any manure-handling equipment.

V.

Answering paragraph 13, Standley admits it was paid sums by Beltman.

VI.

Answering paragraph 16, Defendant Standley is without sufficient information from Plaintiff's Complaint to form an opinion of what the "intended purpose of the manure handling system" includes, and therefore denies the same.

Second Defense

VII.

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

Third Defense

VIII.

Plaintiffs misused, abused or otherwise exceeded the intended use of all products sold or installed by Standley, and ignored the instructions of Standley and Houle as to the use and

maintenance of those products.

Fourth Defense

IX.

Plaintiff's Complaint fails to state a claim against Defendant Scott Standley upon which relief can be granted. Defendant Scott Standley was not an officer, director or employee of Standley Trenching, Inc. at any time pertinent to the facts at issue in this suit.

Fifth Defense

X.

Plaintiff's Complaint fails to state a claim against Defendant Scott Standley upon which relief can be granted.

Affirmative Defenses

XI.

As and for affirmative defenses, Standley raises the defenses of estoppel, failure of consideration, laches, the statute of frauds, and the lack of privity of contract.

XII.

As and for further affirmative defenses, Standley raises the defense of failure to join indispensable parties to this suit.

XIII.

As and for further affirmative defenses, Standley alleges that Beltman or third parties designed and engineered the manure handling system including the cell system, the concrete edifices, including construction and pouring of all concrete, excavation of pits, and design and engineering of irrigation cells.

XIV.

As and for further affirmative defenses, Standley raises

performance, accord and satisfaction, failure to timely inform defendants of any breaches of contract, breaches of warranty, revocation of acceptance, rescission, and any other affirmative defenses available at common law or the Uniform Commercial Code.

XV.

As and for further affirmative defenses, Standley raises the defense of statute of limitations, including but not limited to Idaho Code 48-619.

COUNTERCLAIM

As and for its counterclaim against counterdefendants, Charles DeGroot and DeGroot Farms, LLC (herein "DeGroot"), counterclaimant Standley Trenching, Inc. d/b/a Standley & Co. (herein "Standley") alleges as follows:

1. Counterclaimant Standley at the request of Counterdefendant DeGroot made numerous service calls to Counterdefendant's dairy. Counterdefendants DeGroot are indebted to Counterclaimant Standley in the amount of \$20,259.57 together with interest at the statutory rate of 12% per annum from March 16, 2001.

2. Counterclaimants have been required to retain the firm of Stephan, Kvanvig, Stone & Trainor and have agreed to pay that firm a reasonable fee.

WHEREFORE, Counterclaimant prays for relief as follows:

1. That the Plaintiffs take nothing by their complaint and that the same be dismissed.

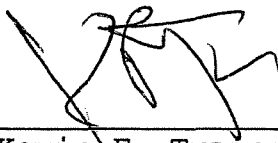
2. For costs of suit and reasonable attorney's fees.

3. On Defendant/Counterclaimant's counterclaim for

judgment against Counterdefendant Charles DeGroot and DeGroot Farms, LLC, judgment in the amount of \$20,259.57, together with interest at the statutory rate of 12% per annum from March 16, 2001 until the date of judgment.

DATED this 20th day of February, 2002.

STEPHAN, KVANVIG, STONE & TRAINOR


By 
Kevin F. Trainor

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2002, I caused a true and correct copy of the foregoing instrument, to be served by the method indicated below, and addressed to the following:

Julie Klein Fischer
White Peterson
Canyon Park at THE IDAHO CENTER
5700 East Franklin Road, Ste. 200
Nampa, ID 83687


- U.S. Mail
- Telecopy (FAX)
- Overnight Mail
- Hand Delivered


Kevin F. Trainor

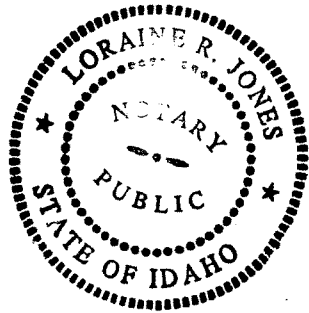
STATE OF IDAHO)
 : ss.
COUNTY OF TWIN FALLS)

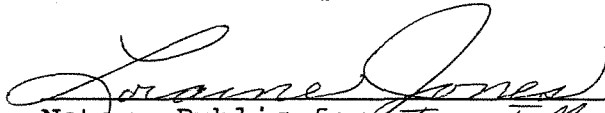
KURT STANDLEY, upon first being duly sworn upon oath,
deposes and says:

I am one of the Defendants in the above and foregoing
action; I have read the foregoing Answer and Counterclaim, know the
contents thereof and state that the facts as set forth therein are
true, as I verily believe.

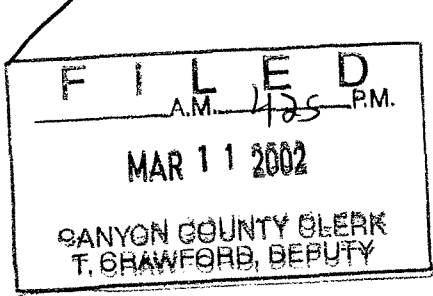

KURT STANDLEY

SUBSCRIBED AND SWORN to before me this 20 day of February, 2002.




Notary Public for Twin Falls Idaho
Commission Expires: 6/7/03

Julie Klein Fischer, ISB #4601
Kevin E. Dinius, ISB #5974
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
jkf@whitepeterson.com
ked@whitepeterson.com



Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)
)
-vs-)
)
KURT STANDLEY, SCOTT STANDLEY and)
STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO., and J. HOULE & FILS,)
INC., a Canadian corporation;)
)
Defendants.)

CASE NO. CV 2001-7777

ANSWER TO DEFENDANTS'
COUNTERCLAIM

Counterdefendant, Charles DeGroot and DeGroot Farms, LLC, (hereinafter collectively, "DeGroot") and, in reply to the Counterclaim on file herein, admits, denies and alleges as follows:

FIRST DEFENSE

DeGroot denies all of the allegations contained in STANDLEY TRENCHING, INC., d/b/a

ANSWER TO DEFENDANTS' COUNTERCLAIM - 1

STANDLEY & CO.'s (hereinafter "Standley") Counterclaim, except those specifically admitted herein.

SECOND DEFENSE

Standley's counterclaim fails to state a claim upon which relief can be granted.

1. With respect to paragraph 1 of Standley's Counterclaim, DeGroot admits that it requested Standley make various service calls to the DeGroot Dairy, but denies DeGroot is indebted to Standley in the amount of \$20,259.57. DeGroot further denies that any interest, statutory or otherwise, has accrued on the amount of \$20,259.57 allegedly due.
2. DeGroot denies paragraph 2 of Standley's Counterclaim.

FIRST AFFIRMATIVE DEFENSE

Standley breached its warranties to DeGroot as alleged in DeGroot's Complaint. Any costs incurred by Standley as alleged in its counterclaim were a result of Standley's breach of warranties.

SECOND AFFIRMATIVE DEFENSE

DeGroot has performed all of its obligations under its agreement with Standley, and is not further indebted to Standley.

THIRD AFFIRMATIVE DEFENSE

Standley materially breached its agreement with DeGroot by failing to design and install a functional manure handling system and DeGroot is thereby relieved from any obligations to Standley.

FOURTH AFFIRMATIVE DEFENSE

Standley's counterclaim is breached herein by reason of failure of consideration.

ANSWER TO DEFENDANTS' COUNTERCLAIM - 2

FIFTH AFFIRMATIVE DEFENSE

Standley negligently failed to take proper and adequate protective and preventive measures to prevent or minimize the damages complained of in Standley's counterclaim, and such actions caused, contributed to, or aggravated damages alleged by Standley.

SIXTH AFFIRMATIVE DEFENSE

Standley's counterclaim is barred by the Statute of Frauds.

SEVENTH AFFIRMATIVE DEFENSE

Standley breached the covenant of good faith and fair dealing implied in the agreement at issue.

EIGHTH AFFIRMATIVE DEFENSE

Any amount due Standley, if any, is subject to offset against the damages Plaintiff has suffered as a result of Standley's material breach of agreement.

REQUEST FOR ATTORNEY FEES

DeGroot requests it be awarded its attorney fees and costs incurred herein pursuant to Idaho Code §§ 12-120, 12-121 and other applicable Idaho law.

FUTURE AMENDMENTS TO PLEADINGS

DeGroot reserves the right to amend its answer to counterclaim and to assert additional affirmative defenses as discovery progresses in this case.

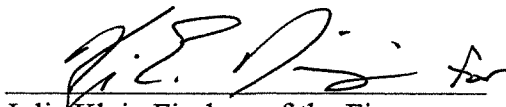
Wherefore, having answered Standley's Counterclaim, DeGroot prays for relief as follows:

1. That Standley take nothing by their counterclaim, and that Standley's counterclaim be dismissed.

2. For DeGroot's costs and attorney's fees associated with defending Standley's counterclaim

DATED this 11th day of March, 2002.

WHITE PETERSON

By: 
Julie Klein Fischer, of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2002, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

X

US Mail

Kevin F. Trainor

Overnight Mail

STEPHAN, KVANVIG, STONE & TRAINOR

Hand Delivery

Post Office Box 83

~~_____~~

Facsimile

Twin Falls, ID 83303-0083

No.208/733-3619

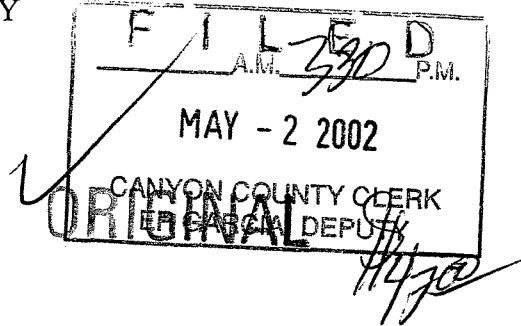


for WHITE PETERSON

ts\Z:\Work\DeGroot Farms, LLC\Standley & Co.-19213\pleadings\counterclaim reply.wpd

William A. McCurdy, ISB No. 1686
John M. Howell, ISB No. 6234
BRASSEY, WETHERELL, CRAWFORD & McCURDY
Washington Federal Plaza
1001 West Idaho, Third Floor
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for Defendant J. Houle & Fils, Inc.



**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

**CHARLES DeGROOT; and DeGROOT
FARMS, LLC,**

Plaintiffs,

vs.

**KURT STANDLEY, SCOTT STANDLEY
and STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO.; and J. HOULE & FILS,
INC., a Canadian corporation,**

Defendants.

**STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO.,**

Counterclaimant,

vs.

**CHARLES DeGROOT; and DeGROOT
FARMS, LLC,**

Counterdefendants.

Case No. CV 2001-7777

**ANSWER AND DEMAND FOR
JURY TRIAL**

COMES NOW Defendant J. Houle & Fils, Inc., by and through its counsel of record Brassey, Wetherell, Crawford & McCurdy, and answers Plaintiffs' First Amended Complaint as follows:

FIRST DEFENSE

The First Amended Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

SECOND DEFENSE

I.

Defendant denies each and every allegation of the First Amended Complaint not herein expressly and specifically admitted.

II.

As to Paragraph 6 of Plaintiffs' First Amended Complaint, this Defendant admits it is a Canadian corporation, but denies the remainder of the allegations.

III.

As to Paragraph 7 of Plaintiffs' First Amended Complaint, this Defendant admits it manufactures manure handling equipment and sells the equipment through authorized dealerships. This Defendant further admits its equipment is distributed throughout the United States, including Idaho.

IV.

Defendant admits the allegations contained in Paragraph 17 of Plaintiffs' First Amended Complaint.

V.

As to Paragraph 31 of Plaintiffs' First Amended Complaint, this Defendant admits only that manure handling equipment manufactured by Houle was installed at Plaintiffs' dairy.

VI.

This Defendant does not have sufficient information to admit or deny the allegations contained in Paragraphs 1-5, 11, 13-15, 18, 22, 23, 25, 34, 35, 41, 43, 44, 49, 53, 59-61, and 64 of Plaintiffs' Complaint, and therefore denies the same.

THIRD DEFENSE

Plaintiffs misused, abused, or otherwise exceeded the intended use of the Houle equipment installed on their property, and ignored the instructions of Standley and Houle as to the use and maintenance of that equipment.

FOURTH DEFENSE

Plaintiffs have waived, or by their conduct, are estopped from asserting the causes of action contained in the First Amended Complaint against this Defendant.

FIFTH DEFENSE

Plaintiffs have and had the ability to mitigate the damages alleged with respect to the subject matter of this action, and have failed and refused to mitigate such damages.

SIXTH DEFENSE

Plaintiffs consented to the events, occurrences, and damages alleged.

SEVENTH DEFENSE

There exists no causation or proximate causation between any alleged act or alleged breach of duty by this answering Defendant and Plaintiffs' alleged damages, and Plaintiffs' alleged injuries and damages, if any, were proximately caused by the negligence or fault of persons or entities other than this Defendant. Asserting this defense, this Defendant does not admit it was negligent, or otherwise blameworthy.

EIGHTH DEFENSE

Plaintiffs were guilty of negligence and negligent misconduct at the time of and in connection with the matters and damages alleged, which conduct on their part, proximately caused and contributed to said events and resultant damages, if any.

NINTH DEFENSE

The damages and injuries sustained by Plaintiffs, if any, were proximately caused by the negligence or fault of parties, persons or entities other than this answering Defendant whom Defendant does not control and over whom Defendant has no control. By asserting this defense, this answering Defendant does not admit that Plaintiffs have been damaged.

TENTH DEFENSE

The injuries and damages sustained by Plaintiff, if any, were proximately caused by the intervening, superseding negligence or conduct of third parties who are not parties to this suit. By asserting this defense, Defendant does not admit that Plaintiffs have been damaged.

ELEVENTH DEFENSE

Plaintiffs' claims for damages, if any, are barred by the statute of limitations.

TWELFTH DEFENSE

Plaintiffs voluntarily assumed the risk of harm, if any, from the products in question, thereby subjecting Plaintiffs' damages, to reduction pursuant to Idaho Code § 6-1305 [1405].

THIRTEENTH DEFENSE

The state of the scientific and industrial knowledge and practice, or "state of the art", at all times material hereto, was such that this answering Defendant neither breached any alleged duty to Plaintiffs, nor knew, nor could have known, that its products presented a foreseeable risk of harm

to the Plaintiffs in the normal and expected use of such a product, and the Complaint against this Defendant is therefore barred.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred for failure to join necessary and indispensable parties.

FIFTEENTH DEFENSE

Without admitting liability whatsoever, this answering Defendant alleges that any recovery by Plaintiffs is subject to Idaho's product liability statutes and any and all applicable defenses and sections contained therein, including, but not limited to, the statute of repose, use of a product with an obvious defective condition, use of a product with a known defective condition, misuse of a product, and alteration or modification of a product.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred due to failure of consideration and/or the lack of privity of contract.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred to due latches.

EIGHTEENTH DEFENSE

Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

NINETEENTH DEFENSE

Plaintiffs' claims are barred by the doctrine of performance.

TWENTIETH DEFENSE

Insofar as Plaintiffs' claims, if any, sound in tort, recovery is barred by the economic loss rule.

TWENTY FIRST DEFENSE

Plaintiff's claims are barred for failure to provide timely notice of any breach of contract.

TWENTY SECOND DEFENSE

Plaintiff is not the real party in interest as respects all or a portion of her claim for damages.

TWENTY THIRD DEFENSE

Discovery is ongoing in this matter, and because of such ongoing discovery, this answering Defendant respectfully reserves the right to amend and/or supplement this Answer as may be necessary.

WHEREFORE, this Defendant prays for Judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by this First Amended Complaint;
2. That the First Amended Complaint in this matter be dismissed with prejudice;
3. That Defendant be awarded costs expended in this matter;
4. That Defendant be awarded attorney fees pursuant to Idaho Rules of Civil Procedure,

and the statues of the State of Idaho, including Idaho Code §§ 12-120 and 12-121; and

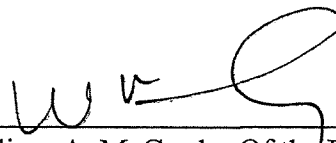
5. For such other and further relief as the Court may deem just.

Defendant demands a trial by jury, composed of no fewer than 12 persons on all issues, claims, and defenses so triable, pursuant to the Constitutions and laws of the United States and the State of Idaho.

DATED this 30th day of April, 2002.

BRASSEY, WETHERELL, CRAWFORD & McCURDY

By



William A. McCurdy, Of the Firm
Attorneys for Defendant J. Houle & Fils, Inc.

CERTIFICATE OF SERVICE

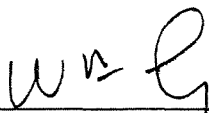
I HEREBY CERTIFY that on this 15th day of ~~April~~ MAY, 2002, I served a true and correct copy of the foregoing ANSWER AND DEMAND FOR JURY TRIAL upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Julie Klein Fischer
Kevin E. Dinius
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Franklin Road, Suite 200
Nampa, ID 83687

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 466-4405

Kevin F. Trainor
STEPHEN, KVANVIG, STONE &
TRAINOR
P. O. Box 83
Twin Falls, ID 83303-0083

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 733-3619



William A. McCurdy

Julie Klein Fischer, ISB #4601
 Kevin E. Dinius, ISB #5974
 WHITE PETERSON
 Canyon Park at The Idaho Center
 5700 East Franklin Road, Suite 200
 Nampa, Idaho 83687
 Telephone: (208) 466-9272
 Facsimile: (208) 466-4405
 jkf@whitepeterson.com

Attorneys for Plaintiffs

FILED
 A.M. 4:35 P.M.
 MAY 02 2003
 CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
 DAIRY, LLC,)
)
 Plaintiffs,)
)
 -vs-)
)
 STANDLEY TRENCHING, INC., d/b/a)
 STANDLEY & CO., and J. HOULE & FILS,)
 INC., a Canadian corporation;)
)
 Defendants.)

CASE NO. CV 2001-7777
SECOND AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL

COME NOW, CHARLES DeGROOT, and DeGROOT DAIRY, LLC (hereinafter referred to as "Plaintiffs"), the above-named Plaintiffs, and for cause of action against the Defendants, STANDLEY TRENCHING, INC. d/b/a/ STANDLEY & CO. (hereinafter "Standley"), and Defendant J. HOULE & FILS, INC. (hereinafter "Houle") COMPLAIN AND ALLEGE as follows:

1. Plaintiff Charles DeGroot at all times relevant herein was a resident of Canyon

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

ORIGINAL

County, Idaho.

2. Plaintiff DeGroot Dairy, LLC is an Idaho LLC with its principal place of business in Canyon County Idaho.

3. Plaintiff DeGroot Dairy, LLC and Plaintiff Charles DeGroot are “Buyers” within the meaning of the Idaho Commercial Code § 28-2-103.

4. Plaintiffs own and operate a 2,000 head dairy in Canyon County, Idaho.

5. Defendant Standley, under the assumed business name of Standley & Co., offers services and sells manure handling equipment for dairy operations throughout Idaho, including Canyon County, Idaho.

6. Defendant Houle, is a Canadian corporation, under information and belief, with its principal United States business being located in the State of Michigan.

7. Defendant Houle manufactures and sells manure handling equipment, which it distributes and sells throughout the United States, including Idaho.

8. Defendant Standley is a “Seller” within the meaning of Idaho Commercial Code § 28-2-103.

9. Defendant Houle is a “Seller” within the meaning of Idaho Commercial Code § 28-2-103.

10. In about July or August 1999, Beltman Construction, Inc. a Washington company (“Beltman”) subcontracted the engineering, design and installation of manure handling equipment to Defendant Standley for Plaintiffs’ dairy being constructed in Canyon County, Idaho.

11. The equipment and products sold by Defendant Standley to Plaintiffs are “goods” within the meaning of Idaho Commercial Code §§ 28-2-105 and/or 28-2-107. Said goods include

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 2

without limitation “goods” manufactured by Houle.

12. Beltman and/or Plaintiffs is a “Buyer” within the meaning of Idaho Commercial Code § 28-2-103.

13. Beltman collected from Plaintiffs and in turn paid Defendant Standley in excess of \$100,000 for engineering, designing and installing manure handling equipment (including Houle equipment) at Plaintiffs’ dairy.

14. At all relevant times Plaintiffs and Beltman relied upon Defendants’ (Houle’s and Standley’s) knowledge, representations, expertise and experience to design, engineer and install a properly functioning manure handling system for Plaintiffs’ Canyon County dairy.

15. Plaintiffs were the intended beneficiary of the contract between Beltman and Defendant Standley.

16. Defendants Standley and Houle were aware of the intended purpose of the manure handling system, including Houle equipment, used on Plaintiffs’ dairy.

17. Some of the manure handling equipment installed by Defendant Standley, is manufactured by Defendant Houle.

18. Following the installation of the manure handling equipment by Defendant Standley, Plaintiffs contracted with Defendant Standley to modify and renovate the manure handling equipment that Standley had installed and some of which was manufactured by Houle. The amount charged for said “renovation” work exceeds \$35,000.

19. The manure handling equipment installed at the Plaintiffs’ dairy by Defendant Standley is inadequate, does not function as intended, and is not fit for its intended use.

20. The manure handling equipment manufactured by Houle and installed at Plaintiffs’

dairy does not function or work as intended.

COUNT ONE

Breach of Contract
(Defendant Standley)

21. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 20 above.

22. Plaintiffs were the intended beneficiary to the contract between Beltman Construction and Defendant Standley for the engineer, design and installation of manure handling equipment at the Plaintiffs' dairy in Canyon County, Idaho.

23. Plaintiffs paid Defendant Standley, through Beltman, in excess of \$100,000 for the manure handling equipment and services of Defendant Standley.

24. Defendant Standley failed to provide the equipment and services contracted and as such materially breached its agreement with Beltman and/or Plaintiffs.

25. Plaintiffs have been required to spend over \$35,000 repairing, renovating and modifying the defective/inadequate manure handling equipment installed by Defendant Standley, which amount is in excess of the total cost of the improperly functioning manure handling system. Despite Plaintiffs efforts to renovate and repair the system installed by Defendant Standley, the system still does not function properly and/or does not perform as contacted.

26. Plaintiffs have suffered consequential damages as a direct and proximate result of Defendant Standley's breach in an exact amount to be proven at trial.

27. As a direct result of Defendant Standley's breach of contract, Plaintiffs suffered damages in an amount to be proven at trial, but which amount exceeds \$150,000.

28. Plaintiffs have been required to retain the services of the law firm of White Peterson

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 4

to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT TWO

Rescission

(Defendants Standley & Houle)

29. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 28 above.

30. Defendant Standley designed and selected the materials/equipment for, and installed manure handling equipment at the Plaintiffs' Canyon County, Idaho dairy during the months of August, September, October and November, 1999.

31. Substantially all of the manure handling equipment installed at Plaintiff's dairy by Defendant Standley was manufactured by Defendant Houle.

32. The design and equipment supplied/installed by Defendant Standley and manufactured by Defendant Houle was inadequate for the size of Plaintiffs' dairy and does not function properly.

33. Plaintiffs are entitled to revoke their acceptance of the insufficient/defective manure handling equipment provided by Defendants pursuant to Idaho Commercial Code § 28-2-608.

34. Plaintiffs notified Defendant Standley on June 18, 2001, that Plaintiffs were revoking acceptance of said manure handling equipment, and demanding a return of Plaintiffs' purchase money pursuant to the Idaho Code § 28-2-608.

35. Defendant Standley has refused to return Plaintiffs' purchase money for the insufficient/defective manure handling equipment.

36. As a result of Defendant Standley's design and installation of insufficient/defective

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 5

manure handling equipment at the Plaintiffs' dairy, which defective equipment was manufactured by Defendant Houle, and Defendant Standley's refusal to accept Plaintiffs' rescission of said equipment, Plaintiffs have suffered damages in the amount of the purchase price of the manure handling equipment.

37. In addition to the damages referenced in the preceding paragraph, Plaintiffs also have suffered incidental and consequential damages in excess of \$35,000 for costs associated with modifying and renovating the defective/insufficient manure handling equipment in an attempt to make the same operational.

38. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT THREE

Breach of Warranties (Defendants Standley and Houle)

39. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 38 above.

40. Plaintiffs and the general contractor, Beltman Construction, requested that Defendants Standley engineer, design, select equipment for and install a manure handling system for a 2000 plus head dairy operation.

41. Defendant Standley represented to Plaintiffs and Beltman Construction that it had the expertise and knowledge to design, construct and install such a system, and represented that it would provide the equipment for the same.

42. Defendant Houle represented, through the sales of its products, that its manure handling equipment and goods were sufficient to perform manure disposal functions for dairies of all sizes.

43. Plaintiffs and Beltman relied upon Defendant Standley's expertise, knowledge and experience in designing, engineering and installing the manure handling system.

44. Plaintiffs and Beltman relied upon Defendant Houle's products to be sufficient and capable of performing the functions for which they are manufactured.

45. The design and equipment prepared, constructed and installed by Defendant Standley is insufficient for managing and disposing of manure from a 2,000 head dairy operation.

46. The equipment manufactured and designed by Houle, and installed by Standley is insufficient for managing and disposing of manure from a 2,000 head dairy operation.

47. Defendants Houle and Standley were aware of the intended use and purpose of the manure handling system and equipment.

48. The equipment manufactured by Defendant Houle and installed by Defendant Standley at the Plaintiffs' dairy does not function or operate as intended and is not merchantable.

49. Defendant Standley, having reason to know of the intended purpose of the manure system and Plaintiffs' reliance on Defendant Standley's skill and judgment to select and furnish a suitable system impliedly warranted the system would be fit for the intended purpose.

50. Defendant Houle, having manufactured and sold manure handling equipment, and knowing the intended use of said equipment impliedly warranted the equipment would be fit for the intended purpose.

51. Defendants breached the implied warranty of fitness for a particular purpose pursuant

to Idaho Commercial Code § 28-2-315.

52. Defendants breached the implied warranty of merchantability pursuant to Idaho Commercial Code § 28-2-314.

53. Defendant Standley, by representing that its products and services would be sufficient to handle manure disposal for a 2,000 head dairy operation, breached the warranty of affirmation or promise pursuant to Idaho Commercial Code § 28-2-313.

54. Defendant Houle, by holding out its products as sufficient to process manure from dairies of all sizes, breached the warranty of affirmation or promise pursuant to Idaho Commercial Code § 28-2-313.

55. Plaintiffs were the beneficiaries, and/or third-party beneficiaries of the warranties referred to in this Count Three.

56. As a direct result of Defendants' breach of warranties, Plaintiffs have suffered damages, including incidental and consequential damages, in an amount exceeding \$150,000 the exact amount to be proven at trial.

57. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT FOUR

Breach of Implied Covenant of Good Faith and Fair Dealing (Defendants Standley)

58. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 57 above.

59. The covenant of good faith and fair dealing is implied in the contract between

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 8

Plaintiffs and/or Beltman and Defendant Standley.

60. The covenant requires Defendant to act in good faith, with fairness and with honesty-in-fact toward Plaintiffs. As a further result of the acts, omissions and occurrences alleged herein above, Defendant Standley violated, nullified and/or significantly impaired the benefits provided to Plaintiffs under contractual relationship and thus materially breached its implied obligation to act in good faith, fairness and honesty-in-fact toward Plaintiffs.

61. As a direct and proximate result of Defendant Standley's conduct, as alleged herein above, Plaintiffs suffered damages in the form of lost profits, lost opportunity, and other special and general damages in an exact amount to be proven at trial in a sum in excess of \$10,000.

62. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

COUNT FIVE

Violations of the Idaho Consumer Protection Act (Defendants Standley and Houle)

63. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 62 above.

64. Defendant Standley sold goods and services to Plaintiffs, as the same are defined in the Idaho Consumer Protection Act, Idaho Code §§ 48-602(6) and (7).

65. Defendant Houle is the seller of goods, as defined in the Idaho Consumer Protection Act, Idaho Code § 48-602, which goods ultimately were purchased by Plaintiffs.

66. Defendants' conduct, including without limitation, representations to Plaintiff that the

goods and services were of a particular quality and standard, constituted unfair and deceptive acts or practices in the conduct of trade and violated the Idaho Consumer Protection Act, Idaho Code §§ 48-601 *et seq.*

67. As a direct and proximate result of Defendants' conduct, as alleged hereinabove, Plaintiffs suffered special and general damages, an exact amount to be proven at trial in a sum in excess of \$100,000.00, the exact amount to be proven at trial.

68. Plaintiffs have been required to retain the services of the law firm of White Peterson to prosecute this action and are entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120, 12-121 and 48-608(4).

ATTORNEYS FEES

Plaintiffs have been required to retain the law firm of White Peterson to prosecute this action and is entitled to recover attorney fees and costs incurred pursuant to Idaho Code §§12-120 and 12-121, 48-608 and any other applicable law.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial composed of no less than twelve (12) persons on all issues so triable, pursuant to Idaho Rule of Civil Procedure 38(b).

PRAYER

WHEREFORE, Plaintiffs pray for Judgment, Order and Decree of this Court as follows:

1. For an award of damage to Plaintiffs, against Defendant Standley for breach of contract in an amount to be proven at trial, but which amount exceeds \$150,000;
2. For an order allowing Plaintiffs' to rescind acceptance of the manure handling equipment from Defendants, and damages associated with Defendants' refusal to allow the same, in

an amount to be proven at trial;

3. For damages against Defendants for breach of the warranty of fitness for a particular purpose, breach of warranty of merchantability and breach of warranty of promise, in an amount to be proven at trial, but which amount exceeds \$150,000;

4. For an award of damages to Plaintiffs against Defendant Standley for breach of the covenant of good faith and fair dealing in an amount to be proven at trial;

5. For an award of damages to Plaintiffs against Defendants for violations of the Idaho Consumer Protection Act in an amount to be proven at trial.

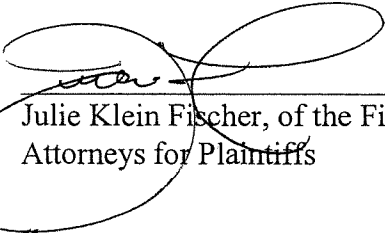
6. For an award of attorney's fees pursuant to Idaho Code §§ 12-120, 12-121, 48-601 *et seq.* and any other applicable law.

7. For such other relief as the Court deems appropriate and just.

DATED this 1 day of May, 2003.

WHITE PETERSON

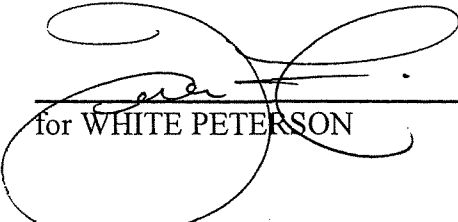
By:


Julie Klein Fischer, of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of May, 2003, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

<p> <input type="checkbox"/> US Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 208/342-4344 </p>	<p> Mike Kelly HOWARD LOPEZ & KELLY 300 Key Financial Center 702 West Idaho Street PO Box 856 Boise, Idaho 83701-0856 Counsel for Defendant Standley Trenching, Inc. </p>
<p> <input type="checkbox"/> US Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 208/345-7212 </p>	<p> Robert D. Lewis Cantrill, Sullivan & King 1423 Tyrell Ln. Boise, Idaho 83701 Associate Counsel for Defendant Standley Trenching, Inc. </p>
<p> <input type="checkbox"/> US Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Facsimile No. 208/3447077 </p>	<p> William A. McCurdy BRASSEY, WETHERELL, CRAWFORD & MCCURDY, LLP 1001 West Idaho, 3rd Floor P.O. Box 1009 Boise, Idaho 83701 Counsel for Defendant J. Houle & Fils, Inc. </p>



 for WHITE PETERSON

Z:\Work\DeGroot Dairy, LLC\Standley & Co.-19213\pleadings\2ND amd complaint.doc

ORIGINAL

Michael E. Kelly ISB # 4351
HOWARD LOPEZ & KELLY PLLC
1100 Key Financial Center
702 West Idaho Street
Post Office Box 856
Boise, Idaho 83701
Telephone (208) 342-4300
Facsimile (208) 342-4344
Revised per Lewis-Answer to 2nd amended complaint.wpd

FILED
A.M. *2/10* P.M.
MAY 13 2003
CANYON COUNTY CLERK
E. P. GARCIA, DEPUTY

Attorneys for Defendant,
Standley Trenching, Inc., d/b/a
Standley & Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO., and J.HOULE &
FILS, INC., a Canadian corporation,

Defendant.

Case No. CV 2001-7777

ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTER CLAIM

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO.,

Counterclaimant,

vs.

CHARLES DeGROOT; AND
DeGROOT DAIRY, LLC,

Counterdefendants.

Defendant, Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley"), for its Answer allege as follows:

I.

First Defense

Plaintiffs Second Amended Complaint fails to state a claim upon which relief can be granted against this answering Defendant.

Second Defense

I.

This answering Defendant denies each and every allegation contained in the Plaintiffs' Second Amended Complaint not herein expressly and specifically admitted.

II.

This answering Defendant admits the allegations contained in paragraphs 1, 2, 6, 7, and 17 of the Plaintiffs' Second Amended Complaint.

III.

This answering Defendant is with out sufficient information or knowledge to either admit or deny the allegations complained in paragraphs 2- 4, 11, 14-16, 22, 24, 42-44, 47, 50, 54, 59, 60, and 65 of the Plaintiffs' Second Amended Complaint.

IV.

This answering Defendant admits that it was paid for services rendered by Beltman. This answering Defendant however denies the remaining allegations of paragraph 13 of the Plaintiffs' Second Amended Complaint.

Third Defense

V.

Plaintiffs, either individually or collectively, are not a party in interest with respect to all or part of their claims for damages contrary to Rule 17, Idaho Rules of Civil Procedure.

Fourth Defense

Plaintiffs have waived their rights or are estopped from asserting the various claims or causes of action set forth in their Second Amended Complaint against this answering Defendant.

Fifth Defense

The damages if any, as alleged by the Plaintiffs were caused by the superceding, intervening conduct of other entities and/or individuals.

Sixth Defense

Plaintiff has failed to mitigate their damages, if any.

Seventh Defense

The damages if any, as alleged by the Plaintiffs were caused by the Plaintiffs' misuse of the products in question.

Eighth Defense

The damages if any, as alleged by the Plaintiffs were caused by a "modification" or "alteration" of the products used by either the Plaintiffs or other entities or individuals.

Ninth Defense

Plaintiffs have failed to join an indispensable party or parties to this lawsuit.

Tenth Defense

The causes of action and allegations of the Plaintiffs' Second Amended Complaint are barred by the applicable statute of limitations, including but not limited to Idaho Code Section 48-619.

Eleventh Defense

Plaintiffs' claims and causes of action against this answering Defendant are barred as there is no privity or contractual relationship between this Defendant and either Plaintiff.

COUNTERCLAIM

As and for its counterclaim against Counterdefendants, Charles DeGroot and DeGroot Dairy, LLC, Standley Trenching, Inc. d/b/a Standley & Co. (herein "Standley") allege as follows:

1. Counterclaimant Standley at the request of Counterdefendant DeGroot made numerous service calls to Counterdefendant's dairy. Counterdefendants DeGroot are indebted to Counterclaimant Standley in the amount of \$20,259.57 together with interest at the statutory rate of 12% per annum from March 16, 2001.

2. Counterclaimants have been required to retain the firm of Cantrill Skinner Sullivan & King LLP and have agreed to pay that firm a reasonable fee, and are entitled to recover reasonable costs and attorney fees in pursuit of this claim.

WHEREFORE, Counterclaimant prays for relief as follows:


1. That the Plaintiffs take nothing by their Complaint and that the same be dismissed.
2. For costs of suit and reasonable attorney's fees.
3. On Defendant/Counterclaimant's Counterclaim for judgment against Counterdefendant Charles DeGroot and DeGroot Dairy, LLC, judgment in the amount of \$20,259.57, together with interest at the statutory rate of 12% per annum from March 16, 2001 until the date of judgment, and reasonable costs and attorney fees.

DEMAND FOR JURY TRIAL

Defendant/Counterclaimant demands a trial by jury, composed of no fewer than 12 persons on all issues, claims, and defenses so triable, pursuant to the Constitutions and laws of the United States and the State of Idaho.


DATED this 12 day of May, 2003.

HOWARD LOPEZ & KELLY, PLLC



Michael E. Kelly
Attorneys for Defendant Standley Trenching,
Inc., d/b/a Standley & Co.

CANTRILL SKINNER SULLIVAN & KING
LLP



Robert D. Lewis
Attorneys for Counterclaimant Standley
Trenching, Inc., d/b/a Standley & Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of May, 2003, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals, by the method indicated below, addressed as follows:

Julie Klein Fischer
Kevin E. Dinius
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687


- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

William A. McCurdy
BRASSEY, WETHERELL,
CRAWFORD, & MCCURDY
Washington Federal Plaza
1001 West Idaho, Third Floor
P.O. Box 1009
Boise, ID 83701-1009

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

Robert Lewis
Cantrill Skinner Sullivan & King LLP
1423 Tyrell Ln
P.O. Box 359
Boise, ID 83701

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile



Michael E. Kelly

ORIGINAL

Robert D. Lewis, ISB #2713
CANTRILL, SKINNER, SULLIVAN & KING LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701
Telephone: (208) 344-8035
Facsimile: (208) 345-7212

FILED
A.M. 2:00 P.M.
JAN 31 2005
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Defendants
Standley Trenching, Inc., d/b/a Standley & Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)

Case No. CV 2001-7777

vs.)

**MOTION FOR SUMMARY
JUDGMENT ON COUNTERCLAIM**

KURT STANDLEY, SCOTT STANDLEY)
and STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO., and J. HOULE & FILS,)
INC., a Canadian corporation,)
)
Defendants.)

STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO.,)
)
Counterclaimant,)

vs.)

CHARLES DeGROOT; AND DeGROOT)
FARMS, LLC,)
)
Counterdefendants.)

COMES NOW Defendant, Standley Trenching, Inc., d/b/a Standley & Co., by and through its attorneys of record, Cantrill, Skinner, Sullivan & King LLP, and moves this Court pursuant to Idaho Rule of Civil Procedure 56 for summary judgment on its Counterclaim against said

Counterdefendants on the grounds that there is no genuine issue of material fact, and Counterclaimant is entitled to judgment as a matter of law.

This motion is supported by the Affidavit of Robert D. Lewis, the Affidavit of Kurt Standley and the Memorandum submitted herewith.

Oral argument is requested.

DATED this 28th day of January, 2005.

CANTRILL, SKINNER, SULLIVAN & KING LLP

By: _____



Robert D. Lewis, Of the Firm
Attorneys for Defendants Kurt Standley, Scott
Standley and Standley Trenching, Inc., d/b/a
Standley & Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:


Julie Klein Fischer	<input type="checkbox"/>	Facsimile
Kevin E. Dinius	<input type="checkbox"/>	Hand Delivery
WHITE PETERSON	<input checked="" type="checkbox"/>	U.S. Mail

Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687
Twin Falls, ID 83303-0083

William A. McCurdy	<input type="checkbox"/>	Facsimile
702 West Idaho, Ste. 1000	<input type="checkbox"/>	Hand Delivery
Boise, ID 83702	<input checked="" type="checkbox"/>	U.S. Mail

Mike Kelly	<input type="checkbox"/>	Facsimile
HOWARD LOPEZ & KELLY	<input type="checkbox"/>	Hand Delivery
300 Key Financial Center	<input checked="" type="checkbox"/>	U.S. Mail

702 West Idaho Street
P.O. Box 856
Boise, ID 83701-0856



Robert D. Lewis

ORIGINAL

Robert D. Lewis, ISB #2713
CANTRILL, SKINNER, SULLIVAN & KING LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701
Telephone: (208) 344-8035
Facsimile: (208) 345-7212

LODGED
FILED
A.M. 2:20 P.M.
JAN 31 2005
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Defendants
Standley Trenching, Inc., d/b/a Standley & Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)

Case No. CV 2001-7777

vs.)

KURT STANDLEY, SCOTT STANDLEY)
and STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO., and J. HOULE & FILS,)
INC., a Canadian corporation,)
)
Defendants.)

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT ON COUNTERCLAIM**

STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO.,)
)
Counterclaimant,)

vs.)

CHARLES DeGROOT; AND DeGROOT)
FARMS, LLC,)
)
Counterdefendants.)

COMES NOW, Counterclaimant, Standley Trenching, Inc., d/b/a Standley & Co. (Standley)
and hereby presents this Memorandum to the Court in support of the Motion for Summary Judgment
on Counterclaim.

**MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON COUNTERCLAIM - Page 1**

Standley has stated a Counterclaim against Counterdefendants Charles DeGroot and DeGroot Dairy LLC, for amounts due on account. On May 13, 2003, the Amended Counterclaim was filed with this Court. It seeks \$20,259.57 together with interest at the statutory rate of 12% per annum from March 16, 2001 for amounts due from Counterdefendants for service calls made to the dairy.

Rule 56(c) requires the entry of summary judgment against a non-moving party when the pleadings, depositions, admissions on file, together with affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Counterdefendant submits pertinent deposition testimony of Charles DeGroot, as exhibits to the Affidavit of Robert D. Lewis in Support of Motion for Summary Judgment. He admits that DeGroot requested the services of Standley, that Standley supplied the services, that he agreed to pay, and that DeGroot has not fully paid for the services that were supplied. The Affidavit of Kurt Standley establishes that \$20,259.57 is the final principal amount due and unpaid.

UNDISPUTED FACTS

The following facts are based upon the testimony of Counterdefendant Charles DeGroot. The Affidavit of Robert D. Lewis submits true and correct copies of pages from the transcript of Charles DeGroot's deposition taken October 22, 2002 (Depo I), as Exhibit A and the deposition taken on January 27, 2004 (Depo II), as Exhibit B. The following facts will be supported by citation directly to the page from those depositions.

Charles DeGroot is one of the Plaintiffs in this case. DeGroot Dairy LLC is an LLC owned by DeGroot and his wife and son, Earnest. Depo. I, pp. 11, 12. The final decision and authority on matters regarding the dairy are made by Charles DeGroot. Depo. I, pp. 33, 34.

**MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON COUNTERCLAIM - Page 2**

After the dairy was completed, Standley sent employees, when requested by DeGroot, to provide maintenance and repair services for the dairy. DeGroot made some payments as he was billed. Depo. II, p.326. As of October 6, 2000, the sum of \$13,317.52 was owed for the repair services. On October 12, 2000, a Standley & Co. letter was written to DeGroot to memorialize an agreement by DeGroot that he would pay this entire balance. Depo. II, pp. 328, 329, Exhibit 8.

Standley continued to provide services and parts after October 12, based upon DeGroot's assurance he would pay.

Exhibit 9 is a true and correct copy of a Statement of Account for Charles DeGroot, for the dates 5/26/00 through 4/6/01. At his deposition, Mr. DeGroot testified that this statement contains an accurate entry of services and parts provided to DeGroot by Standley & Co. during the time stated. Depo. II, p. 334. He did not dispute that the parts listed and the services stated were provided to DeGroot Dairy by Standley. Depo. II, p. 334. He agreed to pay this account. The statement shows a payment on March 16, 2001 in the amount of \$3,000. Mr. DeGroot testified that he never made any payment to Standley after March 16, 2001. Depo. II, pp. 334, 335.

The Affidavit of Kurt Standley establishes that the final amount due and owing is \$20,259.57.

ARGUMENT

It is undisputed that Standley provided parts and services for DeGroot's dairy between May 26, 2000 and April 6, 2001. DeGroot requested the parts and services; agreed to pay for them; and then failed to pay as agreed. It is undisputed that the amount of \$20,259.57 is an outstanding balance due on open account for the parts and services.

Under Idaho law, when there is undisputed proof that services and parts were provided on

open account, that a statement of account is true and accurate, and that the written statement accurately sets forth the final balance due, then judgment can be entered on an account stated or open account theory. M.T. Deaton & Co. V. Leibrock, 114 Idaho 614, 759 P.2d 905 (Idaho App. 1988).

Here, these matters are undisputed. Rule 56, I.R.C.P., requires the Court to enter summary judgment in favor of Standley & Company on its Counterclaim.


CONCLUSION

Summary judgment should issue on the Standley Counterclaim. Standley provided parts and services for DeGroot dairy in the years 2000 and 2001. The parts provided and the services supplied are undisputed and are set forth on Exhibit 9 to the second deposition of Charles DeGroot. A true and correct copy of that Statement of Account is attached hereto for the Court's convenience. DeGroot owes and has not paid \$20,259.57.

Summary judgment should issue in favor of Counterclaimant on its Counterclaim.

DATED this 28th day of January, 2005.

CANTRILL, SKINNER, SULLIVAN & KING LLP

By: 
Robert D. Lewis, Of the Firm
Attorneys for Defendants Kurt Standley, Scott Standley and Standley Trenching, Inc., d/b/a Standley & Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:


Julie Klein Fischer	<input type="checkbox"/>	Facsimile
Kevin E. Dinius	<input type="checkbox"/>	Hand Delivery
WHITE PETERSON	<input checked="" type="checkbox"/>	U.S. Mail

Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687
Twin Falls, ID 83303-0083

William A. McCurdy	<input type="checkbox"/>	Facsimile
702 West Idaho, Ste. 1000	<input type="checkbox"/>	Hand Delivery
Boise, ID 83702	<input checked="" type="checkbox"/>	U.S. Mail

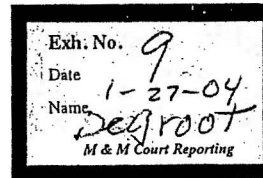
Mike Kelly	<input type="checkbox"/>	Facsimile
HOWARD LOPEZ & KELLY	<input type="checkbox"/>	Hand Delivery
300 Key Financial Center	<input checked="" type="checkbox"/>	U.S. Mail

702 West Idaho Street
P.O. Box 856
Boise, ID 83701-0856



Robert D. Lewis

DATE	INVOICE	DISCRIPTION	AMOUNT	OUTSTANDING	DUE
5/26/00	9136	PARTS AND LABOR TO CLEAN SAND OUT OF DRAINS AND EQUIPMENT	2,182.00		2,182.00
5/26/00	9135	EXTRA TO DAIRY NOT INCLUDED IN ORIGINAL BID	3,304.94	3,304.94	5,486.94
6/20/00	9138	CLEAN OUT DRAINS, CLEAN UP AROUND SEPARATOR	660.00		6,146.94
7/25/00	118	REPAIR ON FLUSH PUMP	97.50	97.50	6,244.44
7/25/00	119	REPAIRS ON SEPARATOR	220.00		6,464.44
8/9/00	130	SERVICE CALL AND PARTS TO REPAIR SEPARATOR	2,251.79		8,716.23
9/1/00	163	CLEAN SEPARATORS	545.00		9,261.23
9/14/00	149	REPLACE 40 HSP MOTOR WITH 50 HSP MOTOR-DIFFERENCE	1,755.97		11,017.20
9/14/00	150	REPLACE IMPELLER	125.00		11,142.20
9/14/00	151	REPLACE IMPELLERS	1,031.62		12,173.82
9/14/00	152	REPAIR SCRAPER ASSEMBLY	145.00		12,318.82
9/14/00	153	REPAIRS ON SEPARATOR	713.15	713.15	13,031.97
9/18/00	154	REPLACE CONVEYOR BELT	1,537.37	1,537.37	14,569.34
9/18/00	155	REPAIR SEPARATOR	150.00		14,719.34
9/29/00	162	REPAIRS TO CONVEYOR BELT	230.00	230.00	14,949.34
9/29/00	164	UNPLUG SEPARATOR	90.00		15,039.34
10/2/00		CHECK #3204 FOR PAYMENT OF 9136	(2,182.00)		12,857.34
10/16/00	165	REPAIRS TO SEPARATOR	1,505.00		14,362.34
10/20/00	193	REPAIRS TO AGI-PUMP	2,572.00	2,572.00	16,934.34
10/24/00	181	REPAIRS TO SHORT STACKER	319.98	319.98	17,254.32
10/31/00	192	REPAIRS TO SEPARATOR	1,987.70	1,987.70	19,242.02
10/31/00		CHECK #3953 FOR PAYMENT OF 3953	(1,505.00)		17,737.02
11/22/00	203	UNTHAW AND CLEAN SEPARATOR	350.00	350.00	18,087.02
11/22/00	204	REPAIRS TO SEPARATOR	3,957.72	3,957.72	22,044.74
11/27/00		CHECK #4059 FOR PAYMENT OF 9138, 119, 130, 150, 152, 164	(3,500.00)	(8.20)	18,544.74
12/4/00	209	REPLACE BELTS ON CONVEYORS-LABOR ONLY	315.00	315.00	18,859.74
12/4/00	210	REPAIRS TO SEPARATOR	420.00	420.00	19,279.74
12/4/00	211	REPAIRS TO STACKER	315.20	315.20	19,594.94
12/4/00	212	REPAIRS TO STACKER	529.20	529.20	20,124.14
12/21/00	234	DE ICE STACKER AND CLEAN UP AREA	255.00	255.00	20,379.14
12/21/00	235	RECONNECT HOSES	113.93	113.93	20,493.07
12/22/00		CHECK #4127 FOR PAYMENT OF 155, 163, 149, 151	(3,482.58)		17,010.49
12/26/00	236	DE ICE STACKER AND CLEAN UP AREA	351.25	351.25	17,361.74
1/25/01	258	REPLACE IMPELLERS AND REPAIR PUMP	1,725.10	1,725.10	19,086.84
2/5/01		CHECK #4294 PAYMENT ON ACCOUNT	(3,000.00)	(3,000.00)	16,086.84
2/6/01	265	WELDING	37.50	37.50	16,124.34
2/9/01	266	75 HP MOTOR	4,538.28	4,538.28	20,662.62
3/16/01		CHECK #4448 PAYMENT ON ACCOUNT	(3,000.00)	(3,000.00)	17,662.62
3/16/01	306	REPLACE AND INSTALL HOSE	2,091.95	2,091.95	19,754.57
4/6/01	324	REPAIRS TO PUMPS	505.00	505.00	20,259.57



TOTAL BALANCE DUE

STCO 0232

20,259.57

91

EXHIBIT A

ORIGINAL

Robert D. Lewis, ISB #2713
CANTRILL, SKINNER, SULLIVAN & KING LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701
Telephone: (208) 344-8035
Facsimile: (208) 345-7212

FILED
A.M. P.M.
JAN 31 2005
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Defendant
Standley Trenching, Inc., d/b/a Standley & Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
Plaintiffs,)

Case No. CV 2001-7777

vs.)

AFFIDAVIT OF ROBERT D. LEWIS

KURT STANDLEY, SCOTT STANDLEY)
and STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO., and J. HOULE & FILS,)
INC., a Canadian corporation,)
Defendants.)

STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO.,)
Counterclaimant,)

vs.)

CHARLES DeGROOT; AND DeGROOT)
FARMS, LLC,)
Counterdefendants.)

STATE OF IDAHO)
County of Ada)ss.

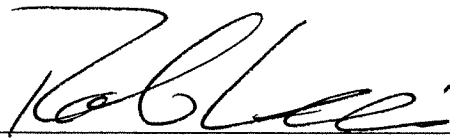
I am one of the attorneys of record for Defendant Standley Trenching, Inc., and I attest to the following matters based upon my own personal knowledge.

Attached hereto as Exhibit "A" are true and correct copies of pages from the deposition transcript of Charles DeGroot, taken October 22, 2002, page numbers 11, 12, 33 and 34.

Attached hereto as Exhibit "B" are true and correct copies of pages from the deposition transcript of Charles DeGroot, taken January 27, 2004, page numbers 326-335, and Exhibits 8 & 9.

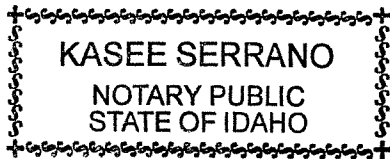
FURTHER YOUR AFFIANT SAYETH NAUGHT.


DATED this 28th day of January, 2005.



Robert D. Lewis

SUBSCRIBED AND SWORN to before me this 28th day of January, 2005.




Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: 10/28/09

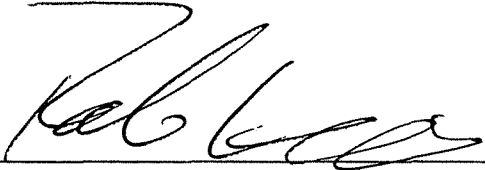
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Julie Klein Fischer	<input type="checkbox"/>	Facsimile
Kevin E. Dinius	<input type="checkbox"/>	Hand Delivery
WHITE PETERSON	<input checked="" type="checkbox"/>	U.S. Mail
Canyon Park at The Idaho Center 5700 East Frankly Rd., Ste. 200 Nampa, ID 83687		

William A. McCurdy	<input type="checkbox"/>	Facsimile
702 West Idaho, Ste. 1000	<input type="checkbox"/>	Hand Delivery
Boise, ID 83702	<input checked="" type="checkbox"/>	U.S. Mail

Mike Kelly	<input type="checkbox"/>	Facsimile
HOWARD LOPEZ & KELLY	<input type="checkbox"/>	Hand Delivery
300 Key Financial Center	<input checked="" type="checkbox"/>	U.S. Mail
702 West Idaho Street P.O. Box 856 Boise, ID 83701-0856		



Robert D. Lewis

Exhibit “A”

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

COPY

CHARLES DeGROOT; and DeGROOT)
FARMS, LLC,) Case: CV 2001-7777
Plaintiffs,) Volume I
vs.)
KURT STANDLEY, SCOTT STANDLEY)
and STANDLEY TRENCHING, INC.,)
d/b/a STANDLEY & CO.; and)
J. HOULE & FILS, INC., a)
Canadian corporation,)
Defendants.)

Continued...

THE DEPOSITION OF CHARLES DeGROOT

OCTOBER 22, 2002

REPORTED BY:

MONICA M. ARCHULETA, CSR NO. 471

Notary Public

M & M Court
Reporting
Service, Inc.

Since 1970

Registered Professional Reporters

SOUTHERN
1-800-234-9611

■ BOISE, ID
208-345-9611

■ POCATELLO, ID
208-232-5581

■ TWIN FALLS, ID
208-734-1700

■ ONTARIO, OR
503-881-1700

NORTHERN
1-800-879-1700

■ COEUR D'ALENE, ID
208-765-1700

■ SPOKANE, WA
509-455-4515

Page 9

1 Q During the course of the day are there any
 2 requirements with your medication that you have to
 3 take another dose, or you have to have food, or
 4 anything like that that we can accommodate?
 5 A No.
 6 Q Where do you currently reside, sir?
 7 A 10394 Melmont Road, Melba, Idaho 83641.
 8 Q What is your phone number?
 9 A (208) 495-2131.
 10 Q Who resides with you at that location?
 11 A My wife.
 12 Q What is her name?
 13 A Janice.
 14 Q J-a-n-i-c-e?
 15 A Yes. And our youngest son, Jesse.
 16 Q How old is Jesse?
 17 A He is 18.
 18 Q Do you have other children?
 19 A Yes.
 20 Q What are their names and ages, please.
 21 A Ernest is 25. Thomas is 23. Colleen is
 22 19.
 23 Q Any other children?
 24 A No.
 25 Q Have you been married to anyone other than

Page 10

1 Janice?
 2 A No.
 3 Q Where does Ernest live?
 4 A He lives at 10392 Melmont Road.
 5 Q Essentially next door?
 6 A Yes.
 7 Q Where does Thomas live?
 8 A He is a student at Dordt College. Sioux
 9 Center, Iowa.
 10 Q Which college?
 11 A Dordt. D-o-r-d-t.
 12 Q And where does Colleen live?
 13 A She is also at Dordt College.
 14 Q Does Ernest currently work with you at the
 15 dairy?
 16 A Yes.
 17 Q How long has he worked with you at the
 18 dairy?
 19 A From its inception.
 20 Q From its inception do you mean from the
 21 time it went into operation?
 22 A Yes.
 23 Q Was he working at the dairy during the
 24 time the dairy was being constructed?
 25 A No.

Page 11

1 Q Does Jesse currently work for you at the
 2 dairy?
 3 A In a limited capacity.
 4 Q Currently what is the nature of his job?
 5 A He gets up and basically pushes cows up in
 6 the morning on Mondays and on Thursdays.
 7 Q And what time of the day does he get to do
 8 that?
 9 A From about 6:00 until 7:00 in the morning
 10 before he goes to school.
 11 Q You indicated that your son, Ernest, has
 12 been working at the dairy since it went into
 13 operation. What date, generally, do you use to set
 14 the time that you went into operation?
 15 A We started milking cows at that facility
 16 on April 20, 2000.
 17 Q The complaint is in the name -- well, your
 18 name. And then also DeGroot Farms, LLC. Is there
 19 indeed an LLC? It has an ownership interest in the
 20 farm?
 21 A It is not DeGroot Farms. It is DeGroot
 22 Dairy. That is incorrect.
 23 Q Is it set up as an LLC?
 24 A Yes, it is.
 25 Q Is it an LLC in Idaho?

Page 12

1 A Yes.
 2 Q Who are the principals in the LLC? Who
 3 has an ownership interest?
 4 A Myself and my wife. And this year we
 5 brought Ernest in as a small percentage.
 6 Q And what percent does Ernest have?
 7 A One percent.
 8 Q Do you and your wife -- well, what
 9 interest do you have?
 10 A It is approximately 50 percent.
 11 Q 49.5?
 12 A Yes.
 13 Q What I was trying to figure out is whether
 14 you and your wife have equal interest or if one has
 15 more than the other?
 16 A Up until this year we did have equal
 17 interests. But then we separated it out and brought
 18 him in. Brought Ernest in.
 19 Q So did each of you give up a half point to
 20 Ernest?
 21 A Yes.
 22 Q When was DeGroot Dairy, LLC established?
 23 A I cannot give you the exact date. Julie
 24 Klein Fischer is the one who drew up the LLC papers.
 25 I cannot give you the exact date. But it was in the

Page 33

- 1 grains and the hay. Just basic overseer.
- 2 Q Who would make the decisions concerning
- 3 herd size, whether or not new stock needed to be
- 4 brought in, that type of thing?
- 5 MR. DINIUS: You're talking about Idaho?
- 6 MR. McCURDY: I'm talking about Idaho.
- 7 Thanks for that clarification.
- 8 THE WITNESS: Well, the herd size was
- 9 determined by the amount of corrals or freestalls we
- 10 built. And that was set from the plans.
- 11 Q (BY MR. McCURDY) Well, it is possible to
- 12 build more corrals; isn't it?
- 13 A It is possible.
- 14 Q It's possible to have corrals that aren't
- 15 full, right?
- 16 A Correct.
- 17 Q So within those parameters there is some
- 18 decisions to be made about herd size. Fair
- 19 statement?
- 20 A Yes.
- 21 Q If those decisions are to be made are they
- 22 your decisions?
- 23 A It was a decision between myself and
- 24 Ernest.
- 25 Q Who got the final vote?

Page 34

- 1 A The one who is in debt.
- 2 Q That's you? Does that grimace mean "yes"?
- 3 A Yes.
- 4 Q I want to go back to Sunnyside for a few
- 5 minutes. Why did you decide to leave Washington?
- 6 A My dairy there was 223 acres and I was
- 7 milking 1,250 cows. I needed more land.
- 8 Q So you could expand the herd?
- 9 A Correct.
- 10 Q Was the thought that you needed to take
- 11 advantage of the economy as a scale?
- 12 A Yes.
- 13 Q Could you describe for me the steps you
- 14 went through to initiate the process of moving to
- 15 Idaho? How you decided to come to Idaho? How you
- 16 found a site for your new dairy? How you selected
- 17 the people to work with you on constructing the new
- 18 dairy? All of that. It calls for a narrative. And
- 19 I appreciate that, Kevin. If you want me to jump
- 20 into a question every now and then, just let me
- 21 know. This will be faster, I think.
- 22 A I'll answer one question. What was your
- 23 first question?
- 24 MR. DINIUS: Chuck, what he is wanting
- 25 know is in general what did you do to move from

Page 35

- 1 Washington to Idaho? Go ahead and tell him in
- 2 general what you did to move.
- 3 THE WITNESS: We first found a site.
- 4 Q (BY MR. McCURDY) What steps did you go
- 5 through to do that?
- 6 A I came down here numerous times. Then
- 7 there was a section of land available. And we were
- 8 able to purchase that.
- 9 Q A full section? 640?
- 10 A This one is short three acres. So 637.
- 11 Q And that turned out to be the property
- 12 near Melba?
- 13 A Yes.
- 14 Q When you were looking for property were
- 15 you working with a broker? Or real estate agent?
- 16 A Yes.
- 17 Q Who was that?
- 18 A His name was Bill Timmermann. He's in
- 19 Washington. In Idaho the realtor is Richard
- 20 Reineke.
- 21 Q Just so I'm clear. You sold your place in
- 22 Washington.
- 23 Correct?
- 24 A Correct.
- 25 Q Did Timmermann work with you on that?

Page 36

- 1 A Yes.
- 2 Q Did Timmermann also work with you on the
- 3 purchase of the property in Idaho?
- 4 A He located it. He contacted Richard
- 5 Reineke and Richard Reineke located this property.
- 6 Q To whom did you sell your dairy in
- 7 Washington?
- 8 A John Bosma.
- 9 Q Does he still run it as a dairy?
- 10 A Yes.
- 11 MR. LEWIS: Can you spell the last name,
- 12 please?
- 13 THE WITNESS: B-o-s-m-a.
- 14 Q (BY MR. McCURDY) When was that
- 15 transaction completed?
- 16 A I think it was December of '99.
- 17 Thereabouts.
- 18 Q Did the sale of the dairy include the
- 19 herd?
- 20 A No.
- 21 Q Did it include any cows?
- 22 A No.
- 23 Q Did you move your entire herd down here?
- 24 A Yes.
- 25 Q From the time you sold to Bosma in

Exhibit “B”

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

COPY

CHARLES DeGROOT and DeGROOT) VOLUME II
DAIRY, LLC.,)
Plaintiffs,)
vs.) Case No.
STANDLEY TRENCHING, INC., d/b/a) CV 2001-777
STANDLEY & CO.; and J. HOULE &)
FILS, INC., a Canadian corporation,)
Defendants.)
_____)

(Caption Continued)

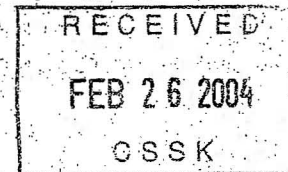
CONTINUED DEPOSITION OF CHARLES DeGROOT

January 27, 2004

REPORTED BY:

DIANA L. DURLAND, CSR No. 637

Notary Public



M & M Court
Reporting
Service, Inc.

Since 1970

SOUTHERN
1-800-234-9611

■ BOISE, ID
208-345-9611

■ TWIN FALLS, ID
208-734-1700

■ POCATELLO, ID
208-232-5581

■ ONTARIO, OR
503-881-1700

NORTHERN
1-800-879-1700

■ COEUR D'ALENE, ID
208-765-1700

■ SPOKANE, WA
503-455-4515

1 the problems with the trappers.
 2 Q. Other than what we talked about earlier, was
 3 he the one involved in replacing the bayonet fuses?
 4 A. Yes. I think he was involved with that or
 5 he was a contact person.
 6 Q. John Roth, do you know him?
 7 A. Yes.
 8 Q. How do you know him?
 9 A. He also bid on building the dairy.
 10 Q. Did he ever provide you with any plans or
 11 drawings?
 12 A. He had the same one as this plan.
 13 Q. He had this exact thing?
 14 A. Yes. He might have had some variations on
 15 it, but it's generally the same.
 16 Q. Did he give you a copy of it?
 17 A. I don't know.
 18 Q. To the best of your knowledge, this is from
 19 Vance Construction?
 20 A. Yes.
 21 Q. Did you ever ask either Mr. Standley or
 22 Jeff Grigg, or anyone from Standley, to put in
 23 settling pits for you or sand pits?
 24 A. Did I ask them?
 25 Q. Yes.

1 Q. By believe that they were already in
 2 there or they put --
 3 A. There was some type of sand trap in the
 4 slope screens.
 5 MR. KELLY: I think that's all I have for
 6 now. I'd like to reserve taking additional testimony
 7 from Mr. DeGroot based on what your accountant,
 8 forensic accountant, will say or whatever expert may
 9 say on damages. I think if we get a handle on what
 10 the damages are, I need the opportunity to speak to
 11 him again and see what he actually knows about those.
 12 Other than that, I think I'm done.
 13 MS. FISCHER: I'm not sure we'll agree to
 14 that. This is your day with him. You'll have an
 15 opportunity to depose the expert, so I guess we can
 16 cross that bridge then. I don't want to put on the
 17 record that we'll make him available.
 18 MR. KELLY: I want on the record that we'll
 19 do that.
 20 MS. FISCHER: Fair enough.
 21 MS. FISCHER: Do you want to break?
 22 WITNESS: No.
 23 EXAMINATION
 24 BY MR. LEWIS:
 25 Q. Mr. DeGroot, my name is Rob Lewis and I

1 A. I don't recall.
 2 Q. Is it possible that you did?
 3 A. Like I said, I do not recall.
 4 Q. So it's possible?
 5 MS. FISCHER: He's already answered that
 6 question.
 7 Q. (BY MR. KELLY) Did Standley ever approach
 8 you, either Kurt Standley or Jeff Grigg, or anyone
 9 else from the company approach you about putting rock
 10 traps in?
 11 A. I think there were some kind of rock traps
 12 on those slope screens, if that's what is being
 13 referenced.
 14 Q. You think they were there?
 15 A. Pardon?
 16 Q. You believe that there were rock traps on
 17 these slope screens?
 18 A. There were sand traps or rock traps, yes.
 19 Q. And the rock traps and sand traps are one in
 20 the same to you?
 21 A. I think so.
 22 Q. There was no discussion with regard to
 23 putting rock traps in for an additional cost above
 24 the bid price?
 25 A. That is possible.

1 represent Standley with their counterclaim against
 2 you. Do you have Exhibit 5 in front of you still?
 3 A. Yes.
 4 Q. It's dated July 25, 2000. Exhibit 5, I
 5 think?
 6 MR. KELLY: It's that document there.
 7 Q. (BY MR. LEWIS) I want to ask you about the
 8 second page primarily. Mr. Standley, in this letter
 9 of July 25, gave you two options: One was to come
 10 and recover his equipment, or for to you pay him for
 11 the equipment and to work together after this date.
 12 Do you see those two options?
 13 A. Are those options?
 14 Q. What do you think they are if they're not
 15 options?
 16 A. Either this or that. I had to keep my dairy
 17 operating.
 18 Q. Do you see the two alternatives that I'm
 19 referring to?
 20 A. I see one or two.
 21 Q. After you received this letter of July 25,
 22 2000, did you make additional payments to
 23 Mr. Standley or his company?
 24 A. I believe I made some payments.
 25 Q. And did Mr. Standley continue to send

1 employees of Standley company out provide services
2 for you after this July 25, 2000, letter

1 that there was a meeting on that date with the people
2 stated?

3 A. Yes.

3 A. No.

4 Q. Did you keep any records on the services
5 that were provided to you by -- I'll call the
6 company just Standley for short. Did you keep any
7 records on the services provided to you by Standley
8 after July 25, 2000?

4 Q. Do you recall an agreement that you reached
5 with Jeff Grigg on behalf of Standley & Company for
6 you to make payments on amounts that you owed up to
7 October 12, 2000?

9 A. Other than what I have in my bills paid,
10 that would be the only records I have.

8 A. I do recall that.

9 Q. What is your recollection of the agreement?

11 Q. Have you produced any of those records in
12 this case?

10 A. That I would make payments.

11 Q. And pay the amount that was owed to that
12 date in full?

13 A. I do not know if I have.

13 A. I don't remember the specifics.

14 MR. LEWIS: I haven't seen them.

14 Q. Do you have any independent recollection, as
15 you sit here now, about the payments that you made to
16 Standley after October 12, 2000?

15 WITNESS: Have I produced --

16 MS. FISCHER: You're talking about invoices
17 that you paid?

17 A. I remember I did make some payments to
18 Standley, yes.

18 WITNESS: Yes.

19 Q. And is it accurate to state that after
20 October 12, 2000, Standley continued to send

19 MS. FISCHER: All the invoices we have from
20 Standley have been produced, as far as I know.

21 employees to your farm, to the dairy farm, to provide
22 services in repairing or otherwise working on the
23 manure-handling system?

21 MR. LEWIS: I know we produced some to you
22 guys, but I'm not sure I saw some produced back to
23 us. I could be wrong.

24 A. Through that period of time, yes.

24 MS. FISCHER: I'd have to look. Perhaps if
25 you produced them to us and I know you have them, I

25 Q. And after October 12?

1 might not have given them back.

1 A. More than likely.

2 MR. LEWIS: I haven't seen any back our
3 direction.

2 (Exhibit 9 marked.)

4 MR. KELLY: Off the record.

3 Q. (BY MR. LEWIS) Mr. DeGroot, what I've
4 handed you is Exhibit 9, a copy of a statement of
5 account that was prepared by Standley & Company. It
6 lists invoices dated between May 26, 2000, and April
7 6, 2001. It describes either parts or services that
8 were provided to Chuck DeGroot. And it also sets
9 forth receipt of payments from Chuck DeGroot that are
10 credited against this account statement.

5 (Discussion held off the record.)

6 Q. (BY MR. LEWIS) Is it accurate to say that
7 after July 25, 2000, that Standley continued to
8 provide services to you and your dairy for the
9 manure-handling operations?

11 I just want to talk to you basically about
12 what this record reflects and whether or not you have
13 any disagreement with it; all right?

10 A. Yes.

14 A. All right.

11 (Exhibits 7 and 8 marked.)

12 Q. (BY MR. LEWIS) Take a look at Exhibit 8.
13 It's a letter dated October 12, 2000, from
14 Standley & Company to you, Bates-stamped STCO0240.
15 Tell me when you're finished reading it. Are you
16 finished?

15 MS. FISCHER: I'll caution you: If you
16 haven't seen it, I want you to be careful about
17 testifying from it.

17 This letter references a meeting held on
18 October 6, 2000, between you, Jeff Grigg and
19 Stan Beltman. Do you recall that meeting?

18 Q. (BY MR. LEWIS) Have you seen this before?

20 A. It says I was there.

19 A. Maybe not.

21 MS. FISCHER: Do you recall it? If you
22 don't, say no.

20 Q. Is it possible you've seen it before?

23 WITNESS: I don't recall.

21 A. I don't recall.

24 Q. (BY MR. LEWIS) Do you have any reason to
25 believe that this letter is inaccurate in stating

22 Q. If you look at an entry on 10-2-2000, it
23 reflects that there was a check received by
24 Standley & Company in the amount \$2,182?

25 A. Yes.

1 Q. Do you think that's accurate, or do you
2 know?

3 A. There's a check number and there's an amount
4 that is accurate.

5 Q. Down a little bit further there's another
6 entry for October 31, 2000. Check 3953 for payment
7 of another invoice. The check amount was \$1,505. Do
8 you believe that that is accurate, or do you know?

9 MS. FISCHER: Are you asking if he has any
10 independent recollection making those payments or if
11 the statement is accurate?

12 MR. LEWIS: That's another way to say the
13 same thing. If he can tell me it's accurate -- if he
14 thinks it's inaccurate, for him to tell me.

15 MS. FISCHER: Or if you don't know.

16 WITNESS: I don't know. Really, I don't.

17 Q. (BY MR. LEWIS) Do you have any information
18 that you believe is inaccurate as you sit here right
19 now?

20 A. No.

21 Q. There's another check payment reflected made
22 on 11-27-00. Do you see that entry? The amount of
23 the payment received was \$3,500 by Standley?

24 A. I see it.

25 Q. Do you recall making such a payment on this

1 amount of \$3,000 that is reflected as being received
2 by Standley & Company. Do you recall making that
3 payment?

4 A. Same answer.

5 Q. Is it possible you made these payments?

6 A. It is possible.

7 Q. Do you see the final total balance due there
8 on this sheet of \$20,259.57?

9 A. Yes.

10 Q. Do you recall being billed that amount
11 around this period of time by Standley & Company for
12 amounts due and owing?

13 MS. FISCHER: Object as to form.

14 MR. LEWIS: I thought that was a pretty good
15 question. What is wrong with the form?

16 MS. FISCHER: I don't know.

17 Q. (BY MR. LEWIS) Do you recall being billed
18 for this amount?

19 MS. FISCHER: Whether he agrees it's due and
20 owing. The question whether he agreed receiving a
21 billing for approximately that amount was different
22 from whether or not he agreed it was due and owing.
23 That was the basis of my objection.

24 Q. (BY MR. LEWIS) Do you recall ever receiving
25 a billing statement from Standley & Company advising

1 account?

2 A. Same answer.

3 Q. Which is?

4 A. I have no recollection of having done this,
5 but -- yeah.

6 Q. It's possible you did? I want you to finish
7 your statement. Is it possible you made that payment
8 in that amount about that date?

9 A. Yes, I would say it is possible.

10 Q. A little further down on the invoice
11 statement of account there's an invoice dated
12 12-22-00 or an entry reflecting receipt by Standley
13 of check number 4127 in the amount of \$3,482.58. Do
14 you have any information to tell me whether this is
15 accurate or not?

16 A. Same answer.

17 Q. You don't know; is that correct?

18 A. Correct.

19 Q. A little further down in the year 2001 on
20 February 5th, another check is reflected: 4294 in
21 the amount of \$3,000. Do you recall making such a
22 payment?

23 A. Same answer.

24 Q. Further down on the statement on March 16,
25 2001, there's another check, number 4448 in the

1 you that the amount of \$20,259.57 was due and owing
2 as of April 6, 2001?

3 A. That's possible.

4 Q. Do you see all of the entries on here for
5 services rendered and parts supplied for which your
6 statement of account was billed? On the second
7 left-hand column there's a description of many
8 different items.

9 A. Yes.

10 Q. Take a look at those for me. I'm going to
11 ask you generally about them, if we can.

12 A. Okay.

13 Q. Do you have any knowledge of whether or not
14 this is an accurate entry of services and parts
15 provided to you by Standley & Company during the time
16 stated?

17 A. That's what they said they did.

18 Q. Does that appear to be accurate to you?

19 A. Appears to be. That's what is on the paper.

20 Q. My question is: Do you dispute that they
21 provided those parts to DeGroot Dairy or provided
22 those services to you?

23 A. No.

24 Q. Did you ever make any payments to
25 Standley & Company, to your recollection, after March

1 - 16, 2001?

2 A. No.

3 MR. LEWIS: That's all the questions I have.

4 MR. McCURDY: I have no questions at this
5 point, but I do want to reserve my right to inquire
6 with Mr. DeGroot once we receive the expert opinions
7 or other discovery response due on the specific
8 damages claim. I understand your position. I'm not
9 asking you to agree for my right; I'm simply noting
10 it on there.

11 MS. FISCHER: Fair enough.

12 MR. McCURDY: I would like the witness to
13 review and sign this portion of his deposition
14 transcript, please.

15 MS. FISCHER: I don't have any objections.

16 MR. KELLY: Let me clarify that the design
17 document Bates-stamped DeGroot 09637 utilized here in
18 Mr. DeGroot's testimony has been marked as Exhibit 7
19 to his deposition.

20 (The deposition concluded at 3:01 p.m.)

21 (Signature requested.)

22
23
24
25

REPORT CERTIFICATE

I, DIANA L. DURLAND, CSR No. 637, Certified

Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony and all objections made
were recorded stenographically by me and were
thereafter transcribed by me or under my direction;

That the foregoing is a true and correct
transcript of all testimony given, to the best of my
ability;

I further certify that I am not a relative
or employee of any attorney or of any of the parties,
nor financially interested in the action.

I declare that the foregoing is true and
correct.

IN WITNESS WHEREOF, I set my hand and seal
this 3rd day of February, 2004.

20
21
22
23
24
25

DIANA L. DURLAND, CSR No. 637
Notary Public
Boise, Idaho
My Commission Expires 12-16-04

CERTIFICATE OF WITNESS

I, Charles DeGroot, being first duly sworn,
depose and say:

That I am the witness named in the foregoing
deposition consisting of pages 203 through 336; that
I have read said deposition and know the contents
thereof; that the questions contained therein were
propounded to me; and that the answers contained
therein are true and correct except for any changes
that I may have listed on the Errata Sheet attached
hereto.

Charles DeGroot

SUBSCRIBED AND SWORN to before me this ____ day of
_____, 2004.

NAME OF NOTARY PUBLIC _____
NOTARY PUBLIC FOR _____
RESIDING AT _____
MY COMMISSION EXPIRES _____

12
13
14
15
16
17
18
19
20
21
22
23
24
25

ERRATA SHEET FOR CHARLES DEGROOT

PAGE	LINE	REASON FOR CHANGE
READS	_____	_____
SHOULD READ	_____	_____
PAGE	LINE	REASON FOR CHANGE
READS	_____	_____
SHOULD READ	_____	_____
PAGE	LINE	REASON FOR CHANGE
READS	_____	_____
SHOULD READ	_____	_____
PAGE	LINE	REASON FOR CHANGE
READS	_____	_____
SHOULD READ	_____	_____
PAGE	LINE	REASON FOR CHANGE
READS	_____	_____
SHOULD READ	_____	_____
PAGE	LINE	REASON FOR CHANGE
READS	_____	_____
SHOULD READ	_____	_____

104 WITNESS SIGNATURE: _____

Kurt Standley, *Owner*
(208) 420-1641
Office (208) 324-9449
Fax (208) 324-9452



Manure Equipment

Jeff Grigg, *General Manager*
(208) 420-1642
Kirk L. Claiborn, *Sales Manager*
(208) 420-1651

October 12, 2000

DeGroot Dairy
3431 Lynwood
Melba, Id 83641

Chuck,

I visited with Laurie Beltman on Tuesday, October 10, and she informed me that you had requested that she withhold the funds that are due on the completion of the dairy.

It is my understanding that you, Jeff, and Stan Beltman had reached an agreement regarding payment during the meeting that was held on October 6th. We were to receive one half of the moneys due, \$6,658.76, immediately and the remaining half on October 20th. We were to make the required repairs to the equipment prior to the 20th. Today is the 12th and we have not received any funds.

We need to clean up this old balance of \$13,317.52 as agreed.

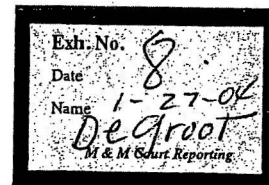
I have included a statement and invoices for work that has been done at the dairy up to the 21st of September. We would be happy to arrange some kind of payment plan that will work for both of us on this balance.

Look over these invoices and give myself or Jeff a call and we can arrange a time so that Jeff can set down and review these invoices and make payment arrangements.

We look forward to hearing from you soon.

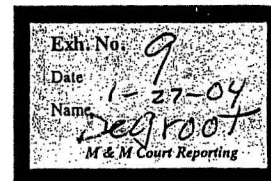
Thank you,


Patti Stumpf



106

DATE	INVOICE	DISCRIPTION	AMOUNT	OUTSTANDING	DUE
5/26/00	9136	PARTS AND LABOR TO CLEAN SAND OUT OF DRAINS AND EQUIPMENT	2,182.00		2,182.00
5/26/00	9135	EXTRA TO DAIRY NOT INCLUDED IN ORIGINAL BID	3,304.94	3,304.94	5,486.94
6/20/00	9138	CLEAN OUT DRAINS, CLEAN UP AROUND SEPARATOR	660.00		6,146.94
7/25/00	118	REPAIR ON FLUSH PUMP	97.50	97.50	6,244.44
7/25/00	119	REPAIRS ON SEPARATOR	220.00		6,464.44
8/9/00	130	SERVICE CALL AND PARTS TO REPAIR SEPARATOR	2,251.79		8,716.23
9/1/00	163	CLEAN SEPARATORS	545.00		9,261.23
9/14/00	149	REPLACE 40 HSP MOTOR WITH 50 HSP MOTOR-DIFFERENCE	1,755.97		11,017.20
9/14/00	150	REPLACE IMPELLER	125.00		11,142.20
9/14/00	151	REPLACE IMPELLERS	1,031.62		12,173.82
9/14/00	152	REPAIR SCRAPER ASSEMBLY	145.00		12,318.82
9/14/00	153	REPAIRS ON SEPARATOR	713.15	713.15	13,031.97
9/18/00	154	REPLACE CONVEYOR BELT	1,537.37	1,537.37	14,569.34
9/18/00	155	REPAIR SEPARATOR	150.00		14,719.34
9/29/00	162	REPAIRS TO CONVEYOR BELT	230.00	230.00	14,949.34
9/29/00	164	UNPLUG SEPARATOR	90.00		15,039.34
10/2/00		CHECK #3204 FOR PAYMENT OF 9136	(2,182.00)		12,857.34
10/16/00	165	REPAIRS TO SEPARATOR	1,505.00		14,362.34
10/20/00	193	REPAIRS TO AGI-PUMP	2,572.00	2,572.00	16,934.34
10/24/00	181	REPAIRS TO SHORT STACKER	319.98	319.98	17,254.32
10/31/00	192	REPAIRS TO SEPARATOR	1,987.70	1,987.70	19,242.02
10/31/00		CHECK #3953 FOR PAYMENT OF 3953	(1,505.00)		17,737.02
11/22/00	203	UNTHAW AND CLEAN SEPARATOR	350.00	350.00	18,087.02
11/22/00	204	REPAIRS TO SEPARATOR	3,957.72	3,957.72	22,044.74
11/27/00		CHECK #4059 FOR PAYMENT OF 9138, 119, 130, 150, 152, 164	(3,500.00)	(8.20)	18,544.74
12/4/00	209	REPLACE BELTS ON CONVEYORS-LABOR ONLY	315.00	315.00	18,859.74
12/4/00	210	REPAIRS TO SEPARATOR	420.00	420.00	19,279.74
12/4/00	211	REPAIRS TO STACKER	315.20	315.20	19,594.94
12/4/00	212	REPAIRS TO STACKER	529.20	529.20	20,124.14
12/21/00	234	DE ICE STACKER AND CLEAN UP AREA	255.00	255.00	20,379.14
12/21/00	235	RECONNECT HOSES	113.93	113.93	20,493.07
12/22/00		CHECK #4127 FOR PAYMENT OF 155, 163, 149, 151	(3,482.58)		17,010.49
12/26/00	236	DE ICE STACKER AND CLEAN UP AREA	351.25	351.25	17,361.74
1/25/01	258	REPLACE IMPELLERS AND REPAIR PUMP	1,725.10	1,725.10	19,086.84
2/5/01		CHECK #4294 PAYMENT ON ACCOUNT	(3,000.00)	(3,000.00)	16,086.84
2/6/01	265	WELDING	37.50	37.50	16,124.34
2/9/01	266	75 HP MOTOR	4,538.28	4,538.28	20,662.62
3/16/01		CHECK #4448 PAYMENT ON ACCOUNT	(3,000.00)	(3,000.00)	17,662.62
3/16/01	306	REPLACE AND INSTALL HOSE	2,091.95	2,091.95	19,754.57
4/6/01	324	REPAIRS TO PUMPS	505.00	505.00	20,259.57



TOTAL BALANCE DUE

STCO 0232

20,259.57

ORIGINAL

Robert D. Lewis, ISB #2713
CANTRILL, SKINNER, SULLIVAN & KING LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701
Telephone: (208) 344-8035
Facsimile: (208) 345-7212

FILED
A.M. 2:11 P.M.
JAN 31 2005
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Defendants
Standley Trenching, Inc., d/b/a Standley & Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)

Case No. CV 2001-7777

vs.)

AFFIDAVIT OF KURT STANDLEY

KURT STANDLEY, SCOTT STANDLEY)
and STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO., and J. HOULE & FILS,)
INC., a Canadian corporation,)
)
Defendants.)

STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO.,)
)
Counterclaimant,)

vs.)

CHARLES DeGROOT; AND DeGROOT)
FARMS, LLC,)
)
Counterdefendants.)

STATE OF IDAHO,)

ss.

County of Twin Falls)

KURT STANDLEY being first duly sworn upon oath, deposes and says:

1. I am a Shareholder in Standley Trenching, Inc., d/b/a Standley & Company, and I was so

in the years 1999 through 2001. The following facts are based upon my own personal knowledge.


2. Attached hereto is a true and correct copy of the Standley & Company Statement of Account for Chuck DeGroot as of April 6, 2001. It is marked with Bates No. STCO 0232.

3. This Statement of Account is true and accurate for the period 5/26/00 to 4/6/01.

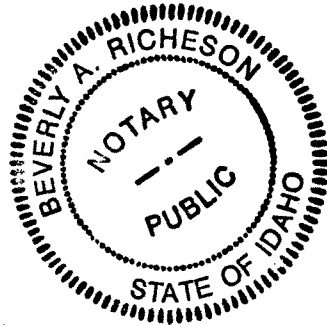
4. The parts listed and services provided were actually supplied to Chuck DeGroot and DeGroot Dairy under his agreement to pay as billed.

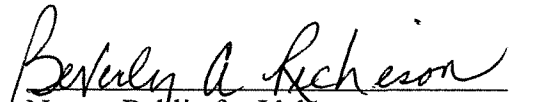
5. The total balance due on April 6, 2001 of \$20,259.57 is the accurate final balance remaining unpaid.

FURTHER YOUR AFFIANT SAYETH NOT.


KURT STANDLEY

SUBSCRIBED and SWORN to before me this 17th day of January, 2005




Notary Public for Idaho
Residing at Jarin Falls ID
Commission expires: 8/22/2008

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:


Julie Klein Fischer	<input type="checkbox"/>	Facsimile
Kevin E. Dinius	<input type="checkbox"/>	Hand Delivery
WHITE PETERSON	<input checked="" type="checkbox"/>	U.S. Mail

Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687

William A. McCurdy	<input type="checkbox"/>	Facsimile
702 West Idaho, Ste. 1000	<input type="checkbox"/>	Hand Delivery
Boise, ID 83702	<input checked="" type="checkbox"/>	U.S. Mail

Mike Kelly	<input type="checkbox"/>	Facsimile
HOWARD LOPEZ & KELLY	<input type="checkbox"/>	Hand Delivery
300 Key Financial Center	<input checked="" type="checkbox"/>	U.S. Mail

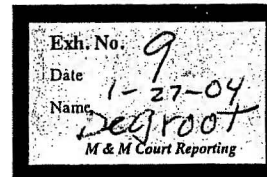
702 West Idaho Street
P.O. Box 856
Boise, ID 83701-0856



Robert D. Lewis

110

DATE	INVOICE	DISCRIPTION	AMOUNT	OUTSTANDING	DUE
5/26/00	9136	PARTS AND LABOR TO CLEAN SAND OUT OF DRAINS AND EQUIPMENT	2,182.00		2,182.00
5/26/00	9135	EXTRA TO DAIRY NOT INCLUDED IN ORIGINAL BID	3,304.94	3,304.94	5,486.94
6/20/00	9138	CLEAN OUT DRAINS, CLEAN UP AROUND SEPARATOR	660.00		6,146.94
7/25/00	118	REPAIR ON FLUSH PUMP	97.50	97.50	6,244.44
7/25/00	119	REPAIRS ON SEPARATOR	220.00		6,464.44
8/9/00	130	SERVICE CALL AND PARTS TO REPAIR SEPARATOR	2,251.79		8,716.23
9/1/00	163	CLEAN SEPARATORS	545.00		9,261.23
9/14/00	149	REPLACE 40 HSP MOTOR WITH 50 HSP MOTOR-DIFFERENCE	1,755.97		11,017.20
9/14/00	150	REPLACE IMPELLER	125.00		11,142.20
9/14/00	151	REPLACE IMPELLERS	1,031.62		12,173.82
9/14/00	152	REPAIR SCRAPER ASSEMBLY	145.00		12,318.82
9/14/00	153	REPAIRS ON SEPARATOR	713.15	713.15	13,031.97
9/18/00	154	REPLACE CONVEYOR BELT	1,537.37	1,537.37	14,569.34
9/18/00	155	REPAIR SEPARATOR	150.00		14,719.34
9/29/00	162	REPAIRS TO CONVEYOR BELT	230.00	230.00	14,949.34
9/29/00	164	UNPLUG SEPARATOR	90.00		15,039.34
10/2/00		CHECK #3204 FOR PAYMENT OF 9136	(2,182.00)		12,857.34
10/16/00	165	REPAIRS TO SEPARATOR	1,505.00		14,362.34
10/20/00	193	REPAIRS TO AGI-PUMP	2,572.00	2,572.00	16,934.34
10/24/00	181	REPAIRS TO SHORT STACKER	319.98	319.98	17,254.32
10/31/00	192	REPAIRS TO SEPARATOR	1,987.70	1,987.70	19,242.02
10/31/00		CHECK #3953 FOR PAYMENT OF 3953	(1,505.00)		17,737.02
11/22/00	203	UNTHAW AND CLEAN SEPARATOR	350.00	350.00	18,087.02
11/22/00	204	REPAIRS TO SEPARATOR	3,957.72	3,957.72	22,044.74
11/27/00		CHECK #4059 FOR PAYMENT OF 9138, 119, 130, 150, 152, 164	(3,500.00)	(8.20)	18,544.74
12/4/00	209	REPLACE BELTS ON CONVEYORS-LABOR ONLY	315.00	315.00	18,859.74
12/4/00	210	REPAIRS TO SEPARATOR	420.00	420.00	19,279.74
12/4/00	211	REPAIRS TO STACKER	315.20	315.20	19,594.94
12/4/00	212	REPAIRS TO STACKER	529.20	529.20	20,124.14
12/21/00	234	DE ICE STACKER AND CLEAN UP AREA	255.00	255.00	20,379.14
12/21/00	235	RECONNECT HOSES	113.93	113.93	20,493.07
12/22/00		CHECK #4127 FOR PAYMENT OF 155, 163, 149, 151	(3,482.58)		17,010.49
12/26/00	236	DE ICE STACKER AND CLEAN UP AREA	351.25	351.25	17,361.74
1/25/01	258	REPLACE IMPELLERS AND REPAIR PUMP	1,725.10	1,725.10	19,086.84
2/5/01		CHECK #4294 PAYMENT ON ACCOUNT	(3,000.00)	(3,000.00)	16,086.84
2/6/01	265	WELDING	37.50	37.50	16,124.34
2/9/01	266	75 HP MOTOR	4,538.28	4,538.28	20,662.62
3/16/01		CHECK #4448 PAYMENT ON ACCOUNT	(3,000.00)	(3,000.00)	17,662.62
3/16/01	306	REPLACE AND INSTALL HOSE	2,091.95	2,091.95	19,754.57
4/6/01	324	REPAIRS TO PUMPS	505.00	505.00	20,259.57



TOTAL BALANCE DUE

STCO 0232

20,259.57

Michael E. Kelly ISB # 4351
Peg M. Dougherty ISB #6043
HOWARD LOPEZ & KELLY PLLC
1100 Key Financial Center
702 West Idaho Street
Post Office Box 856
Boise, Idaho 83701
Telephone (208) 342-4300
Facsimile (208) 342-4344
MSJ.Motion.wpd

FILED
A.M. 3:30 P.M.

JAN 31 2005

CANYON COUNTY CLERK
C. SALINAS, DEPUTY

Attorneys for Defendant Standley Trenching, Inc., d/b/a
Standley & Co.

ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO., and J.HOULE &
FILS, INC., a Canadian corporation,

Defendant.

Case No. CV 2001-7777

DEFENDANT STANDLEY
TRENCHING, INC.'S MOTION FOR
SUMMARY JUDGMENT

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO.,

Counterclaimant,

vs.

CHARLES DeGROOT; AND
DeGROOT DAIRY, LLC,

Counterdefendants.

COMES NOW, Standley Trenching, Inc., d/b/a Standley & Co., by and through its counsel of record, Michael E. Kelly of the firm Howard, Lopez & Kelly LLC, and pursuant to Rule 56 of the Idaho Rules Civil Procedure move for summary judgment on the Plaintiffs' Second Amended Complaint on the basis that upon consideration of the pleadings, depositions, and admissions on file, together with the affidavits filed with this motion indicate that there is no genuine issue as to any material fact and that Defendant Standley Trenching, Inc. is entitled to judgment as a matter of law. This motion is further supported by the accompanying memorandum.

Dated this 31st day of January, 2005.



Michael E. Kelly
Attorney for Defendant Standley Trenching, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of January, 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals, by the method indicated below, addressed as follows:

Julie Klein Fischer
Kevin E. Dinius
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687

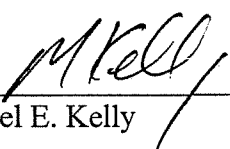
- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

William A. McCurdy
702 W Idaho, Ste 1000
Boise, ID 83702

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

Robert Lewis
Cantrill Skinner Sullivan & King LLP
1423 Tyrell Ln
P.O. Box 359
Boise, ID 83701

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile



Michael E. Kelly

Michael E. Kelly ISB # 4351
Peg M. Dougherty ISB #6043
HOWARD LOPEZ & KELLY PLLC
1100 Key Financial Center
702 West Idaho Street
Post Office Box 856
Boise, Idaho 83701
Telephone (208) 342-4300
Facsimile (208) 342-4344
MSJ.Memo.wpd

FILED
A.M. 5:30 P.M.

JAN 31 2005

CANYON COUNTY CLERK
C. SALINAS, DEPUTY

Attorneys for Defendant Standley Trenching, Inc., d/b/a
Standley & Co.

ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO., and J.HOULE &
FILS, INC., a Canadian corporation,

Defendant.

Case No. CV 2001-7777

DEFENDANTS STANDLEY
TRENCHING, INC.;S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO.,

Counterclaimant,

vs.

CHARLES DeGROOT; AND
DeGROOT DAIRY, LLC,

Counterdefendants.

I.

INTRODUCTION

This is an action seeking damages and/or rescission for an alleged breach of contract; alleged breach of express and implied warranties; and violations of the Idaho Consumer Protection Act, arising from the construction and installation of a manure handling system at a Canyon County Dairy operated by the DeGroot Plaintiffs (hereinafter "DeGroot"). Defendant Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley") have moved for summary judgment upon all of DeGroot's claims on the basis that: (1) DeGroot has admitted that he did not enter into a contract with Standley; nor were Standley and DeGroot in privity of contract such that, as a matter of law, there is no factual basis for a recovery by DeGroot against Standley upon any of the claims stated in the Second Amended Complaint.

Although the parties to this action are corporations – DeGroot Farms LLC a/k/a DeGroot Dairy LLC and Standley Trenching, Inc. – for ease of reference, personal pronouns will be used in referring to either DeGroot or Standley. The DeGroot interest in this action is represented by Charles DeGroot and his son Earnest DeGroot. Excerpts from their depositions which are cited in this memorandum are attached as Exhibits B, C, & D to the Affidavit of Michael E. Kelly. The Standley interest is represented by Kurt Standley. Excerpts from his deposition which are cited in this memorandum are attached as Exhibit A to the Affidavit of Michael E. Kelly. The general contractor on the DeGroot Dairy construction project was Tom Beltman, a representative of Beltman Construction, which is neither a party plaintiff, nor a party defendant in this action. Excerpts from his deposition which are cited in this memorandum are attached as Exhibit E to the Affidavit of Michael E. Kelly.

II.

STATEMENT OF FACTS

In 1999 DeGroot entered into a contract with Beltman Construction, (“Beltman”), for the construction of a new 2,500 head dairy facility in Canyon County, including a manure disposal system. Earnest DeGroot Depo., at pg. 23, LL. 9-11, Kelly Aff. Exh. C. DeGroot has admitted that he never entered into any contract with Standley. Charles DeGroot 10/22/02 Depo., pg. 69, LL. 7-8; pg. 166, LL. 5-14; pg. 169, LL. 22-25, Kelly Aff., Exh. B; Charles DeGroot 01/27/04 Depo., pg. 211, LL. 19-22; Kelly Aff., Exh D. Standley has testified that his understanding was that his contract was with Beltman, not DeGroot. Standley Depo., pg. 123, LL. 1-6, Kelly Aff., Exh. A. Standley’s contract with Beltman was his accepted bid. Standley Depo., pg. 237, L. 15 to pg. 238, L. 2, Kelly Aff., Exh. A.

The only contract that DeGroot entered into for construction of his Idaho Dairy was with Beltman, as the general contractor, which also only consisted the Beltman’s successful bid for the project. Charles DeGroot 01/27/04 Depo., pg. 211, LL. 7-13; Beltman Depo., pg. 20, L. 12 to pg. 21, L. 5, Kelly Aff., Exh. E.

Beltman, as the general contractor on the DeGroot project, solicited and accepted a bid from Standley for the installation of the manure disposal system at the proposed DeGroot Dairy in Canyon County. Standley’s bid included equipment obtained from Co-Defendant, J. Houle & Fils, Inc. (“Houle”), a Canadian corporation. Other than Beltman’s acceptance of Standley’s bid, as general contractor on the DeGroot project, there is no written or oral contract between Beltman and Standley concerning the work that Standley undertook at Beltman’s request on the DeGroot project. Standley Depo., pg. 74, LL. 13-23, Kelly Aff., Exh. A. Charles DeGroot has testified that he understood that Standley was a subcontractor on the project. Charles DeGroot

01/27/04 Depo., pg. 212, LL. 13-16, Kelly Aff., Exh. D.

Beginning in the Summer of 1999, and continuing through the start-up of the DeGroot Dairy in April 2000, Standley undertook the installation of the manure disposal system under his bid that had been accepted by Beltman. Beltman Depo., pg. 19, LL. 4-5, Kelly Aff., Exh. E; Charles DeGroot 01/27/04 Depo., pg. 237, LL. 11-16, Kelly Aff., Exh. D. One of the fundamental components of Standley's, was the use of "compost" bedding in the free stalls of the dairy barn. Standley Depo., pg. 185, L. 20 to pg. 186, L. 2, Kelly Aff., Exh. A.

When operation of the DeGroot Dairy was first started in April 2000 a pit run mixture of sand and gravel, instead of compost, was used as bedding in the free stalls. Charles DeGroot 10/22/02 Depo., pg. 71, L. 18 to pg. 72, . 7, pg. 186, L. 5 to pg. 188, L. 4, Kelly Aff., Exh. B. When the manure was flushed out of the dairy barn in the operation of the manure disposal system this pit run sand and gravel was also flushed out, and as a result interfered with the proper operation of the manure handling equipment. Standley Depo., pg. 118, LL. 10-24, Kelly Aff., Exh. A.

Charles DeGroot has testified that when the manure handling was first started in April 2000 it did in fact work as planned. Charles DeGroot 10/22/02 Depo., pg. 174, LL. 8-12. But maintenance problems arising from the use of the pit run sand and gravel in the free stalls quickly arose. Standley Depo., pg. 130, L. 7 to pg. 131, L. 24. Standley attempted repairs of the equipment, but ultimately the manure disposal system that he had installed under his bid to Beltman had to be substantially removed and replaced with another alternative.

DeGroot has not sought any remedies in damages or rescission against the Beltman, as the general contractor on the project. Instead, DeGroot seeks those same remedies in this action against Standley and Houle, even though, as set out in this statement of facts just above, DeGroot

has admitted that it never entered into a contract with either Standley or Houle.

III.

SUMMARY JUDGMENT STANDARD

The standard for entry of summary judgment is governed by Rule 56(c) of the Idaho Rules of Civil Procedure, which provides that “judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.”

The established rules applicable to summary judgment require the court to liberally construe the facts in the existing record in favor of the nonmoving party, and to draw all reasonable inferences from the record in favor of the nonmoving party. *G & M Farms v. Funk Irrigation Company*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). The initial burden of establishing the absence of a genuine issue of material fact rests with the moving party. *Thompson v. Idaho Insurance Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994). Nevertheless, the existence of disputed facts will not defeat summary judgment if the non-moving party fails to make an evidentiary showing sufficient to establish the existence of an element essential to its case. *Garzee v. Barkley*, 121 Idaho 771, 774, 828 P.2d 334, 337 (Ct.App.1992).

In establishing the existence of an essential element, the non-moving party “must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact.” *Harris v. State*, 123 Idaho 295, 298, 847 P.2d 1156, 1156 (1992). Rather, the non-moving party must come forward with admissible evidence upon which a reasonable jury could rely. *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999).

IV.

ARGUMENT

A. Because DeGroot Was Not A Third Party Beneficiary Of The “Bid” Contract Between Beltman and Standley, He Cannot Obtain Damages For Breach Of Contract Against Standley

In his Second Amended Complaint DeGroot does not seek damages for breach of contract against Standley on the basis of a direct contract. Instead, DeGroot seeks damages against Standley arising from a breach of contract on the basis that DeGroot is a third party beneficiary of the bid contract between Beltman and Standley. *See*, Second Amended Complaint, ¶¶ 15 and 22. Standley is entitled to summary judgment on DeGroot’s breach of contract claim because under Idaho statute a third party beneficiary can only enforce a contract if that contract was expressly made for his direct benefit. The facts in this case only establish DeGroot as an incidental beneficiary to the “bid” contract between Standley and Beltman, and furthermore, it was not made “expressly” for his benefit. Therefore DeGroot has no cause of action for breach of contract against Standley.

Idaho Code § 29-102 provides that a third party beneficiary may recover under a contract made “expressly” for a third parties’ direct benefit. This statute provides as follows:

29-102. ENFORCEMENT BY BENEFICIARY. – A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

The Idaho Court of Appeals has recently had the opportunity to address the application of this statute in a decision directly on point to the question now before this Court on this motion for summary judgment. In *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 99 P.3d 1092 (Ct.App.2004)

the Court held that when a subcontractor on a construction project provides materials and

services to a third party at the request of the general contractor, that the contract itself must express an intent to benefit that third party. Otherwise, the third party is only an “incidental beneficiary” under the contract and not entitled to enforce the contract against the subcontractor. The Court of Appeals’ analysis, as set out below, incorporated black letter law principles stated in Corbin on Contracts and the Restatement (Second) of Contracts:

[W]e must determine whether the Nelsons are intended or incidental third party beneficiaries of any oral contract that existed between Steinbruegge and Anderson or IBP. For purposes of making this determination, it is helpful to analogize to a relationship of a property owner (the Nelsons), a general contractor (Steinbruegge), and subcontractors (Anderson and IBP). [footnote omitted]. Under this analogy, a treatise on contract law explains:

Such contracts [between a principal contractor and subcontractors] are made to enable the principal contractor to perform; and their performance by the subcontractor does not in itself discharge the principal contractor’s duty to the owner with whom he has contracted. The installation of plumbing fixtures or the construction of cement floors by a subcontractor is not a discharge of the principal contractor’s duty to the owner to deliver a finished building containing those items; and if after their installation the undelivered building is destroyed by fire, the principal contractor must replace them for the owner, even though he must pay the subcontractor in full and has no right that the latter shall replace them. It seems, therefore, that **the owner has no right against the subcontractor, in the absence of clear words to the contrary.** The owner is neither a creditor beneficiary nor a donee beneficiary; **the benefit that he receives from performance must be regarded as merely incidental.**

9 CORBIN ON CONTRACTS § 779D (1979) (footnote omitted). By way of illustration: “A contracts to erect a building for C. B then contracts with A to supply lumber needed for the building. C is an incidental beneficiary of B’s promise, and B is an incidental beneficiary of C’s promise to pay A for the building.” RESTATEMENT (SECOND) OF CONTRACTS § 302, illus. 19 (1981).

140 Idaho at 708-09, 99 P.3d at 1098-99 (bracketed reference to “footnote omitted,” and underlined emphasis added; other bracketed references in original).

The Court in *Nelson* concluded that even though materials ordered from the subcontractor

Anderson by the general contractor Steinbruegge was made in Nelson's name; and the materials were delivered to Nelson's residence; and Anderson in fact knew that the materials were being used to construct a cabin on Nelson's property; Nelson was nonetheless not a third party beneficiary entitled to enforce the contract against Anderson because, "there [was] no evidence that during the exchange between Anderson and Steinbruegge, an intention that the Nelsons would primarily benefit from the contract was expressed." 140 Idaho at 709, 99 P.3d at 1099 (bracketed reference added).

Based upon I.C. § 29-102, and the *Nelson* decision, Idaho law requires that a third party beneficiary can enforce a contract only when that contract is "expressly" made for the third party's benefit. If the contract does not make this express declaration then, at most, any third party beneficiary of that contract is considered only incidental, and is not entitled to enforce that contract.

In this case DeGroot claims third party beneficiary status under Standley's "bid" submitted to, and accepted by, Beltman. There is no evidence in the record that this bid contained any statement or expression of intent that it was made expressly for the benefit of DeGroot. In the absence of such a declaration, DeGroot has no legal basis under Idaho law to seek to enforce that bid, which was a contract only between Standley and Beltman. Therefore, Standley is entitled to summary judgment on DeGroot's breach of contract claim, as a matter of law.

B. Because DeGroot And Standley Were Not Parties To A Contract, There Is No Basis For DeGroot To Seek Rescission Against Standley

DeGroot seeks rescission under I.C. § 28-2-608 of the Uniform Commercial Code (UCC) in the second cause of action he asserts against Standley in his Second Amended Complaint.

DeGroot seeks rescission arising out of Standley's installation of manure handling equipment in the Fall of 1999. *See*, Second Amended Complaint ¶ 30. The rescission remedy under the UCC is only available to a party to a contract. DeGroot has admitted that he was not a party to any contract with Standley for the installation of the manure handling equipment at the DeGroot Dairy. Because there is no contract between Standley and DeGroot, there can be no rescission of contract. Therefore, Standley is entitled to summary judgment as a matter of law on DeGroot's rescission claim.

Idaho Code § 28-2-608, upon which DeGroot bases his rescission claim, provides as follows:

28-2-608. REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART. – (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

- (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
- (b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

In paragraphs 3 and 8 of DeGroot's Second Amended Complaint he alleges that he is a "seller," and that Standley is a "buyer," as defined in I.C. § 28-2-103 of the Idaho Uniform Commercial Code. The definitions provided in that section follow:

28-2-103. Definitions and index of definitions. – (1) In this chapter unless the context otherwise requires:

(a) “Buyer means a person who buys or contracts to buy goods.

...

(d) “Seller” means a person who sells or contracts to sell goods.

...

Also relevant to question of the right of rescission under the Uniform Commercial Code is the requirement of an enforceable contract that is provided by I.C. § 28-2-201(1), which provides as follows:

28-2-201. Formal requirements – Statute of frauds. – (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more **is not enforceable** by way of action or defense **unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought** or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

...

(Emphasis added).

In *Griffith v. Latham Motors*, 128 Idaho 356, 913 P.2d 572 (1996), a case involving a Lemon Law claim arising from the sale of an automobile, the Court, in sorting out whether the manufacturer or dealer was the proper party against whom warranty and rescission claims could be brought, declared that, “Under I.C. § 28-2-608 (1995), a buyer may revoke acceptance only against the seller.” 128 Idaho at 361, 913 P.2d at 577.

Because DeGroot has admitted that he never entered into a contract with Standley, Charles DeGroot 10/22/02 Depo., pg. 69, LL. 7-8; pg. 166, LL. 5-14; pg. 169, LL. 22-25, Kelly Aff., Exh. B; Charles DeGroot 01/27/04 Depo., pg. 211, LL. 19-22; Kelly Aff., Exh D., there is no contract between Standley and DeGroot, and consequently there can be no rescission of

contract. Therefore, Standley is entitled to summary judgment as a matter of law on DeGroot's rescission claim.

C. Because DeGroot And Standley Were Not Parties To A Contract, Nor In Privity Of Contract, DeGroot Cannot Obtain Any Warranty Remedies Against Standley.

DeGroot alleges breach of the implied warranty of merchantability (I.C. § 28-2-314); breach of the implied warranty of fitness for a particular purpose (I.C. § 28-2-315); and breach of express warranty (I.C. § 28-2-313), in his third cause of action against Standley. DeGroot's claims again are based upon his alleged status as a third-party beneficiary of the "bid" contract between Standley and Beltman. *See*, Second Amended Complaint, ¶ 55. There is no evidence whatsoever of any express warranty made by Standley to DeGroot. Privity of contract is required in order to recover upon implied warranty theories. *Salmon River Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 353, 544 P.2d 306, 311 (1975). Because there is no privity of contract between DeGroot and Standley, and because there is no evidence of any express warranty made by Standley to DeGroot, Standley is entitled to summary judgment as a matter of law on DeGroot's warranty claims.

There is no evidence that Standley made any express warranties to DeGroot for the purpose of recovery of damages under I.C. § 28-2-313, which provides as follows:

28-2-313. EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE. – (1) Express warranties by the seller are created as follows:

- (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods **and becomes part of the basis of the bargain** creates an express warranty that the goods shall conform to the affirmation or promise.
- (b) Any description of the goods which **is made part of the basis of the bargain** creates an express warranty that the goods shall conform to the description.

- (c) Any sample or model which **is made part of the basis of the bargain** creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, **but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.**

(Emphasis added). In paragraph 41 of the DeGroot’s Second Amended Complaint it is alleged that:

41. Defendant Standley represented to Plaintiffs and Beltman Construction that it had the expertise and knowledge to design, construct and install such a system, and represented that it would provide the equipment for the same.

This is the only allegation in the complaint that even suggests the creation of an express warranty by Standley to DeGroot. The facts in this case all rebut any creation of an express warranty between Standley and DeGroot. As highlighted in the citation to I.C. § 28-2-313, upon which DeGroot relies, an express warranty under that UCC statute must be “part of the basis of the bargain.” Statements regarding the appropriateness of a product have been held to create express warranties under Idaho law. *Tolmie Farms, Inc. v. J.R. Simplot Co., Inc.*, 124 Idaho 607, 611, 862 P.2d 299, 303 (1993).

There is no evidence in this case that Standley ever made any “affirmation of fact or promise,” or provided any “description of the goods” to DeGroot that amounted to an express warranty. Even if there were evidence of such a representation by Standley to DeGroot, it did not become a part of the “basis of the bargain,” as required for an express warranty under I.C. § 28-2-313, because DeGroot has unequivocally testified that he had no contract with Standley. Charles DeGroot 10/22/02 Depo., pg. 69, LL. 7-8; pg. 166, LL. 5-14; pg. 169, LL. 22-25, Kelly Aff., Exh.

B; Charles DeGroot 01/27/04 Depo., pg. 211, LL. 19-22; Kelly Aff., Exh D.

In the absence of any factual evidence supporting the creation of an express warranty, and in the absence of evidence that the requisite legal standard for creation of such a warranty has been established, summary judgment should be granted to Standley on DeGroot's express warranty claim as a matter of law.

DeGroot also seeks recovery under the UCC implied warranty of merchantability (I.C. § 28-2-314), and implied warranty of fitness for a particular purpose (I.C. § 28-2-315). The two cited statutes provide as follows:

28-2-314. IMPLIED WARRANTY -- MERCHANTABILITY -- USAGE OF TRADE. – (1) Unless excluded or modified (section 28-2-316), a warranty that the goods shall be merchantable **is implied in a contract for their sale** if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and
- (b) in the case of fungible goods, are of fair average quality within the description; and
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 28-2-316) other implied

warranties may arise from course of dealing or usage of trade.

(Emphasis added).

28-2-315. IMPLIED WARRANTY -- FITNESS FOR PARTICULAR PURPOSE. – Where the seller **at the time of contracting** has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

(Emphasis added).

As recently reaffirmed by the Idaho Court of Appeals in *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 99 P.3d 1092 (Ct.App.2004), privity of contract is required in order for there to be any recovery upon an implied warranty theory under the UCC:

Privity of contract is required in a contract action to recover economic loss for breach of implied warranties. *Salmon Rivers Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 353, 544 P.2d 306, 311 (1975); *see also Clark v. Int'l Harvester Co.*, 99 Idaho 326, 332, 581 P.2d 784, 790 (1978). The Nelsons concede that they did not directly enter into a contract with Anderson, Wicher, or IBP. However, the Nelsons argue that Steinbruegge acted as an agent of Anderson, Wicher or IBP or, in the alternative, that the Nelsons are third party beneficiaries of any contract between Steinbruegge and Anderson, Wicher, and IBP. The Nelsons additionally argue that the privity requirement should be relaxed because of its unfairness, particularly in light of the economic loss rule addressed below.

140 Idaho at 707-08, 99 P.3d at 1097-98.

The *Nelson* Court rejected both the agency and third party beneficiary theories that were advanced by the appellants in that case as the basis for the necessary privity of contract for recovery on implied warranty theories. 140 Idaho at 708-710, 99 P.3d at 1098-1100. In this case DeGroot has made no claim that Standley was an agent of the general contractor, Beltman, and as already discussed above, the facts of this case do not satisfy the requirements necessary to make DeGroot a third party beneficiary of the contract between Standley and Beltman.

Summary judgment should be entered for Standley, as a matter of law, on DeGroot's express and implied warranty claims on the basis that neither the necessary contract, nor privity of contract, exists to allow recovery on any of those theories, as a matter of law; and furthermore that there is no evidence that any representation amounting to an express warranty was ever made by Standley to DeGroot, that was the basis of the bargain.

D. In The Absence Of A Contract, There Can Be No Recovery For Breach Of The Implied Covenant Of Good Faith And Fair Dealing

In paragraph 60 of DeGroot's Second Amended Complaint he alleges that, "Defendant Standley violated, nullified and/or significantly impaired the benefits provided to Plaintiffs under contractual relationship and thus materially breached its implied obligation to act in good faith, fairness and honesty-in-fact toward Plaintiffs." (emphasis added). Again, as already amply supported by citation to the record before the Court on this motion for summary judgment, DeGroot has admitted that he had no contract with Standley. In the absence of a contract between the parties, there can be no breach of the covenant of good faith and fair dealing that is implied in every contract. *See, Huyett v. Idaho State University*, 04.25 ISCR 971, 973, ___ P.3d ___ (December 7, 2004) ("The university could not have breached a covenant of good faith or fair dealing with respect to a non-existent contract.").

Due to the absence of any contractual relationship between them, Standley is entitled to summary judgment as a matter of law on DeGroot's claim for breach of the implied covenant of good faith and fair dealing.

E. Standley Made No Misrepresentation To DeGroot About The Goods He Supplied, Nor Did It Actually Provide Goods Of Different Quality Or Grade, That Violated the Idaho Consumer Protection Act

DeGroot alleges that Standley has violated I.C. § 48-603(6) & (7) of the Idaho Consumer

Protection Act. These two sections provide as follows:

48-603. Unfair methods and practices. – The following unfair methods of competition and unfair or deceptive acts or practices **in the conduct of any trade or commerce** are hereby declared to be unlawful, where a persons knows, or in the exercise of due care should know, that he has in the past, or is:

...

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of particular style or model, if they are of another:

...

(Emphasis added). In paragraph 66 of his Second Amended Complaint, DeGroot alleges as follows:

66. Defendants' conduct, including without limitation, representations to Plaintiff **that the goods and services were of a particular quality and standard**, constituted unfair and deceptive acts or practices in the conduct of trade and violated the Idaho Consumer Protection Act, Idaho Code §§ 48-601 *et seq.*

(Emphasis added).

As set out above in the citation to I.C. § 48-603(7), it is only a violation of the Idaho Consumer Protection Act to represent that goods and services are of a particular grade, quality, or standard, "if they are of another." Neither in paragraph 66 of his Second Amended Complaint, nor in any other paragraph of that pleading, does DeGroot even make the basic allegation necessary to state a cause of action that the goods and services provided by Standley were of a different grade, quality, or standard, than allegedly had been represented to him. It is not a violation of the Idaho Consumer Protection Act to simply represent that "goods and services were of a particular quality and standard," as alleged by DeGroot in his Second Amended

Complaint. A violation of the Act only occurs if goods and services are represented to be of a particular quality and standard and, “they are of another.” Even if an actionable allegation had been made by DeGroot in his complaint, the facts of this case provide no support for such unlawful practices by Standley. *See e.g., In Re Edwards*, 233 B.R. 461, 471-76 (Bkrtcy. D.Ida. 1999) (“Used” goods substituted for goods represented as “new,” and parts and services not of the quality or availability in representations made in the sale of mini-tractors violated I.C. § 48-603(6) & (7)).

No where has DeGroot made the allegation, much less provided any factual support, for any violation of either subsection (6), that the goods were “used,” when they were represented to be “new.” In fact, Earnest DeGroot admitted in his deposition that the goods supplied for the manure handling system were “new.” *See, Earnest DeGroot Depo.*, at pg. 37, LL. 13-15; pg. 38, LL. 17-19; attached as Exhibit C to the Affidavit of Michael E. Kelly.

There is no factual support in the record before the Court that provides any evidence that Standley engaged in any of the practices alleged by DeGroot that constitute violations of the Idaho Consumer Protection Act. I.C. § 48-603(6) & (7).

Furthermore, it is the occurrence of a “sale,” as broadly defined in the Idaho Consumer Protection Act, that is the crucial event that brings a transaction within the coverage of that Act. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 401, 788 P.2d 214, 216 (1990). (“It is the sale that brings the debt into existence that is the crucial event. Debts that do not arise out of the sale of goods and services subject to the provisions of the Act are not covered.”). A cause of action under the Idaho Consumer Protection Act must be based upon a sales contract. *Haskin v. Glass*, 102 Idaho 785, 788, 640 P.2d 1186, 1189 (Ct.App.1982) (Reserving the issue of whether the ICPA applies to real estate transactions because the “contract issue” was dispositive, the

Court held that, “[A] claim under the ICPA must be based upon a contract.”)

These core concepts underlying a cause of action under the Idaho Consumer Protection Act, that a claim must be based upon a “contract,” and that a “sale” is the triggering event that brings a transaction within the coverage of the Act, are derived from the definitions of “trade” and “commerce” in I.C. § 48-602(2):

(2) “Trade” and “commerce” mean the advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services or distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.

As highlighted above, in the citation to the “unfair methods and practices listed in I.C. § 48-603, a violation of the Act only arises under that section if the action at issue arose “in the conduct of any trade or commerce.”

Summary judgment should be granted to Standley on DeGroot’s causes of action arising under the Idaho Consumer Protection Act because those claims are not supported factually, nor are they based upon a sales transaction that arises out of a contract between the parties.

F. Standley Is Entitled To An Award of Attorney Fees Pursuant to I.C. § 12-120(3), I.C. § 12-121, and I.C. § 48-608(4)

Standley seeks an award of attorney fees upon a finding by this Court that he is entitled to a grant of summary judgment on all or any of the claims made by DeGroot. A lawsuit based upon claims by an alleged third party beneficiary to a contract between a contractor and subcontractor involves a commercial transaction for the purpose of an award of attorney fees under I.C. § 12-120(3). *Cannon Builders, Inc. v. Rice*, 126 Idaho 616, 624, 888 P.2d 790, 798 (Ct.App.1995). The facts underlying this case relate to the construction of a commercial dairy operation designed to handle over 2,500 head of milking cows. *Iron Eagle Development, LLC v. Quality Design Systems, Inc.*, 138 Idaho 487, 493, 65 P.3d 509, 515 (2003) (Attorney fees under

I.C. § 12-120(3) in a commercial construction contract); and *Herrick v. Leuzinger*, 127 Idaho 293, 306, 900 P.2d 201, 214 (Ct.App.1995) (Commercial farming operations constitute a commercial transaction under I.C. § 12-120(3)).

Therefore, a “commercial transaction” comprises the gravamen of this lawsuit, entitling the prevailing party to an award of attorney fees under I.C. § 12-120(3). An award of attorney fees to the prevailing party in an action involving a commercial transaction is mandatory under I.C. § 12-120(3). *Merrill v. Gibson*, 139 Idaho 840, 845, 87 P.3d 949, 954 (2004). It is well settled that a party that successfully defends against the enforcement of a contract when the gravamen of the transaction is a commercial transaction is entitled to an award of attorney fees even though the Court rules that no contract exists, or that it is unenforceable. *Lawrence v. Jones*, 124 Idaho 748, 752, 864 P.2d 194, 198 (Ct.App. 1993).

Standley also seeks an award of attorney fees under I.C. § 12-121 and I.R.C.P. 54(e)(1) on the basis that DeGroot pursued his actions against Standley frivolously, unreasonably, and without foundation. I.C. § 12-121 applies to cases as a whole. *Management Catalysts v. Turbo West Corpac, Inc.*, 119 Idaho 626, 630, 809 P.2d 487, 491 (1991). An award of attorney fees under I.C. § 12-121 is discretionary; but it must be supported by findings and those findings, in turn, must be supported by the record. *Conley v. Whittlesey*, 133 Idaho 265, 274, 985 P.2d 1127, 1136 (1999).

DeGroot premised his entire action against Standley upon an alleged right as a third party beneficiary to the “bid” contract between Standley, as a subcontractor, and Beltman, as the general contractor, on the DeGroot dairy construction project. Once it is determined that an action has no legal merit against a named defendant, it should be dismissed as to that defendant. *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct.App.1989) (‘The terms ‘brought’

and 'pursued,' used disjunctively in Rule 54(e)(1), signify that a nonprevailing litigant may suffer an award of fees if a claim which is arguably meritorious when initially asserted is rendered frivolous, unreasonable or without foundation by subsequent events or information during the pendency of the suit.”). Any further proceeding against a defendant, after it is ascertained that there is no legal or factual basis in support of the claims made, is by definition “frivolous.” *See, Landvik By Landvik v. Herbert*, 130 Idaho 54, 62, 936 P.2d 697, 705 (Ct.App.1997).

DeGroot admitted that he had no direct contract with Standley involving the construction and installation of the manure handling system. Charles DeGroot 10/22/02 Depo., pg. 69, LL. 7-8; pg. 166, LL. 5-14; pg. 169, LL. 22-25, Kelly Aff., Exh. B; Charles DeGroot 01/27/04 Depo., pg. 211, LL. 19-22; Kelly Aff., Exh D. As already fully set out above, in the absence of contract and privity of contract DeGroot has no legal basis upon which to seek any recovery against Standley arising in breach of contract, breach of warranties, breach of the implied covenant of good faith and fair dealing, rescission, or upon the Idaho Consumer Protection Act. Therefore, in addition to a mandatory award of attorney fees under I.C. § 12-120(3), an award of attorney fees to Standley is also justified in this case under the discretionary standard of I.C. § 12-121 for a case that is brought and pursued frivolously.

Standley also seeks an award of attorney fees to a prevailing defendant under I.C. § 48-608(4) against a plaintiff who brings a “spurious” action. This statute provides as follows:

(4) Costs shall be allowed to the prevailing party unless the court otherwise directs. In any action brought by a person under this section, the court shall award, in addition to the relief provided in this section, reasonable attorney’s fees to the plaintiff if he prevails. **The court in its discretion may award attorney’s fees to a prevailing defendant if it finds that the plaintiff’s action is spurious or brought for harassment purposes only.**

(Emphasis added).

The Idaho Legislature has provided a split standard for the award of attorney fees under I.C. § 48-608(4). A prevailing defendant is entitled to an award of attorney fees as a matter of right, but a prevailing defendant may only be awarded attorney fees, if in the exercise of its discretion, the Court finds that the plaintiff's action was either spurious, or brought for harassment purposes only. *In re: Western Acceptance Corps*, 117 Idaho 399, 401, 788 P.2d 214, 216 (1990). The determination of the award of attorney fees under I.C. § 48-608(4) is made through an application of the prevailing party analysis in I.R.C.P. 54(d)(1)(B). *Israel v. Leachman*, 139 Idaho 24, 27, 72 P.3d 864, 867 (2003).

As addressed in Part E of the argument, as set out above, although DeGroot alleged violations of the Idaho Consumer Protection Act on the basis that Standley had substituted used or secondhand goods for goods represented as new under I.C. § 48-603(6); and that the goods and services actually provided were of a different standard, quality, or grade, than originally represented. DeGroot has submitted no evidence that Standley made any such representations, and there is no evidence whatsoever that anything other than new goods were used in the construction of the manure handling system at the DeGroot Dairy. Nor has DeGroot even made a basic allegation in his Second Amended Complaint (¶ 66) that the goods and services actually supplied were different than the standard, quality, or grade originally represented, much less supplied any evidence that any difference in the standard, quality or grade of the goods actually supplied varied from any representation that was made to him.

On these facts, DeGroot's action under the Idaho Consumer Protection Act is spurious, and Standley, as a prevailing defendant, is also entitled to a discretionary award of attorney fees on the Idaho Consumer Protection Act cause of action, as provided by I.C. § 48-608(4).

V.

CONCLUSION

In the absence of a contract, or privity of contract, or a contract made for his express benefit as a third party beneficiary, DeGroot cannot state any cause of action against Standley for breach of contract, express or implied warranties, breach of the implied covenant of good faith and fair dealing, rescission, or a violation of the Idaho Consumer Protection Act. Therefore, Standley is entitled to summary judgment on all the claims made against him by DeGroot, and to an award of attorney fees as a matter of right under I.C. § 12-120(3), and as a matter of discretion under I.C. § 12-121 and I.C. § 48-408(4).

Dated this 31st day of January, 2005.



Michael E. Kelly
Attorney for Defendant Standley Trenching, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of January, 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals, by the method indicated below, addressed as follows:

Julie Klein Fischer
Kevin E. Dinius
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687

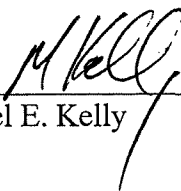
- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

William A. McCurdy
702 W Idaho, Ste 1000
Boise, ID 83702

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

Robert Lewis
Cantrill Skinner Sullivan & King LLP
1423 Tyrell Ln
P.O. Box 359
Boise, ID 83701

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile



Michael E. Kelly

Michael E. Kelly ISB # 4351
Peg M. Dougherty ISB #6043
HOWARD LOPEZ & KELLY PLLC
1100 Key Financial Center
702 West Idaho Street
Post Office Box 856
Boise, Idaho 83701
Telephone (208) 342-4300
Facsimile (208) 342-4344
MSJ.Affidavit.wpd

FILED
A.M. 5:50 P.M.

JAN 31 2005

CANYON COUNTY CLERK
C. SALINAS, DEPUTY

ORIGINAL

Attorneys for Defendant Standley Trenching, Inc., d/b/a
Standley & Co.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO., and J.HOULE &
FILS, INC., a Canadian corporation,

Defendant.

Case No. CV 2001-7777

AFFIDAVIT OF MICHAEL E. KELLY
IN SUPPORT OF DEFENDANT
STANDLEY TRENCHING, INC.'S
MOTION FOR SUMMARY
JUDGMENT

STANDLEY TRENCHING, INC., d/b/a
STANDLEY & CO.,

Counterclaimant,

vs.

CHARLES DeGROOT; AND
DeGROOT DAIRY, LLC,

Counterdefendants.

STATE OF IDAHO)
) ss.
County of Ada)

Michael E. Kelly, being first duly sworn, upon oath deposes and says:

1. I am counsel of record for Defendant Standley Trenching, Inc. in the above-captioned action. I am over the age of majority, competent to testify, and make this affidavit upon personal knowledge.

2. Attached as **Exhibit A** to this Affidavit are excerpts from the January 28, 2004 Deposition of **Kurt Standley** that are cited in the Defendants' Memorandum in Support of Motion for Summary Judgment.

3. Attached as **Exhibit B** to this Affidavit are excerpts from the October 27, 2002 Deposition of **Charles DeGroot** that are cited in the Defendants' Memorandum in Support of Motion for Summary Judgment.

4. Attached as **Exhibit C** to this Affidavit are excerpts from the November 12, 2003 Deposition of **Earnest DeGroot** that are cited in the Defendants' Memorandum in Support of Motion for Summary Judgment.

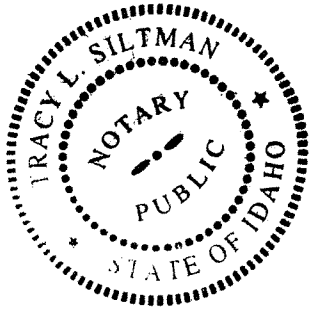
5. Attached as **Exhibit D** to this Affidavit are excerpts from the January 27, 2004 Deposition of **Charles DeGroot** that are cited in the Defendants' Memorandum in Support of Motion for Summary Judgment.

6. Attached as **Exhibit E** to this Affidavit are excerpts from the October 23, 2002 Deposition of **Tom Beltman** that are cited in the Defendants' Memorandum in Support of Motion for Summary Judgment.

Further affiant sayeth not.

Michael E. Kelly
Michael E. Kelly

SUBSCRIBED AND SWORN to before me this 31st day of January, 2005.



Tracy Siltman
Notary Public for Idaho
Residing at Boise ID
My Commission expires: 10/10/08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of January, 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals, by the method indicated below, addressed as follows:

Julie Klein Fischer
Kevin E. Dinius
WHITE PETERSON
Canyon Park at The Idaho Center
5700 East Frankly Rd., Ste. 200
Nampa, ID 83687

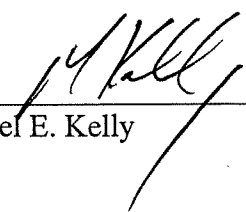
- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

William A. McCurdy
702 W Idaho, Ste 1000
Boise, ID 83702

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile

Robert Lewis
Cantrill Skinner Sullivan & King LLP
1423 Tyrell Ln
P.O. Box 359
Boise, ID 83701

- U.S. Mail
- Hand-Delivered
- Overnight mail
- Facsimile



Michael E. Kelly

EXHIBIT A

DeGroot v. Standley
Affidavit of Mike Kelly

EXHIBIT A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)

Plaintiffs,)

Case No. CV 2001-7777)

vs.)

STANDLEY TRENCHING, INC., d/b/a)
STANDLEY & CO., and J. HOULE &)
FILS, INC., a Canadian corporation.)

Defendants.)

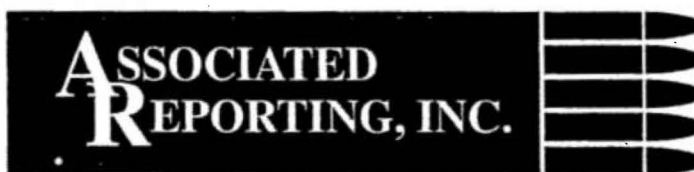
DEPOSITION OF KURT STANDLEY

January 28, 2004

Nampa, Idaho

Reported By:
Colleen P. Kline, CSR No. 345

COPY



1618 W. Jefferson ▼ Boise Idaho ▼ 83702
(800) 588-3370 ▼ (208) 343-4004 ▼ (208) 343-4002 Fax

1 A. Not that I'm aware of.
 2 Q. So you haven't turned anything over to
 3 Mr. Kelly yet?
 4 A. I have not.
 5 Q. But you intend to give him the tape?
 6 A. I do.
 7 Q. Fair enough. Tell me what you did to get
 8 ready for today's deposition.
 9 A. Went to yesterday's, I guess.
 10 Q. Oh, to Chuck's depo?
 11 A. I did.
 12 Q. Anything else?
 13 A. Not really.
 14 MR. KELLY: You can tell him we met, just not
 15 what we talked about.
 16 Q. (BY MR. DINIUS) Yes. If you met with your
 17 attorney, I'm interested in that. But I don't want to
 18 know what you and Mr. Kelly talked about.
 19 A. Yes, we were in Mike's office -- or in
 20 Mike's building yesterday. And after the deposition,
 21 we went into his office and then left.
 22 Q. What I'd like to do is start with a general
 23 background, and we may get more specific depending on
 24 what your answers are and where they lead us.
 25 Let's go to educational background. Where

1 mini-malls like they are now, and put that package
 2 together, and did that kind of work.
 3 Q. Was your business degree a BA or BS?
 4 A. I think it's a BS.
 5 Q. And that's probably what led you into your
 6 line of work that you are in now?
 7 A. Not really.
 8 Q. That was a joke.
 9 A. That's a good one.
 10 Q. See I ask bad questions. And sometimes I
 11 have bad jokes.
 12 So what shifted your diversion from aviation
 13 management?
 14 A. My family had always had a business. We had
 15 been in the underground business. We had done utility
 16 work for Idaho Power, primarily, US West, as it was
 17 known then. We did that for 30-some years. We were
 18 backhoe, track hoe, trenchers, vibratory plow
 19 specialists. You bury home lines. You bury cables up
 20 and down roads, subdivisions, put the cables into
 21 them, bury them to the houses. We were good in the
 22 underground part.
 23 Q. Well, what did you do after you graduated
 24 from BSU in 1977? Did you go to work in the family
 25 business?

1 did you go to high school?
 2 A. Twin Falls High.
 3 Q. What year did you graduate?
 4 A. '71.
 5 Q. Any college after that?
 6 A. I went to two colleges. The first year at
 7 the University of Idaho and graduated from Boise State
 8 in 1977.
 9 Q. Did you obtain a degree at BSU?
 10 A. Yes, I did.
 11 Q. What was your degree in?
 12 A. General -- or business, general business. I
 13 actually studied aviation management.
 14 Q. I didn't even know they had such a thing.
 15 A. They are one of two colleges, actually,
 16 highly thought of in aviation management: Emory,
 17 Florida, and Boise State in Idaho. I was going to
 18 manage airports.
 19 Q. Small airports or?
 20 A. Anything. We actually studied at the time
 21 in '75, we studied -- Denver is the only new airport
 22 that's been built in the last 20 years, 30 years. We
 23 studied that, and how to transport people and luggage,
 24 and how you -- the people, all the retail offices that
 25 are in them, and how they've made them into little

1 A. I did.
 2 Q. When you say "we" in connection with the
 3 family business, who was involved in that?
 4 A. My brother and my father.
 5 Q. What's your brother's name?
 6 A. Scott.
 7 Q. And what's your dad's name?
 8 A. Dutch.
 9 Q. And had your dad started the company?
 10 A. Yeah.
 11 Q. Do you know what year that was?
 12 A. '64.
 13 Q. And what was the name of the company when
 14 you went to work for them?
 15 A. Standley Trenching since I've been around.
 16 Q. That's what it is today?
 17 A. Incorporated, Standley Trenching, dba
 18 Standley Company.
 19 Q. But the corporation is Standley Trenching?
 20 A. Correct.
 21 Q. I know there was some confusion in the
 22 beginning of the case of naming Chuck's entity and
 23 yours.
 24 So is it fair to say from 1977 through
 25 today, you've been employed in the family business,

Page 16

1 which is Standley Trenching?

2 A. Correct.

3 Q. You've indicated that the business that you
4 guys focused on was underground cabling and sounds
5 like utility work?

6 A. Yes.

7 Q. At what point did Standley Trenching focus
8 shift to dairy work?

9 A. I'd say about '94. It's kind of you drift
10 into that thing. You do a job, and, you know, then we
11 were still in the utility business. We were looking
12 for something else to do. US West had changed their
13 contracting purposes. They now have what they call
14 single source contractors, that order all the cable,
15 do all the engineering -- well, not all of it, but
16 primarily all of it, all the underground, all the
17 splicing and so forth. We didn't want to do that.

18 So we were looking for other things to do.
19 And in the Magic Valley there is a large -- really a
20 fairly large dairy industry there --

21 Q. Sure.

22 A. -- and started doing work for them.

23 Q. Who, within the business -- and by that, I
24 mean, you, your brother, or your dad -- who kind of
25 pushed the direction toward the dairy work?

Page 18

1 Q. Tell me in general terms how you came to be
2 the Houle dealer -- or a Houle dealer. Let's say
3 that.

4 A. We were working on a guy named Doug Benson's
5 dairy in Jerome. We were hooking up top air pumps and
6 Albers separators. A guy shows up in a rental car
7 from Minneapolis, and gets out and says, "Hi. I'm Don
8 Bunke. I'm with the J. Houle & Sons in Quebec. Would
9 you guys want to be our dealer?"

10 We really didn't want to be. We were never
11 in retail sales. We were kind of blue-collar guys.
12 We ended up going to their factory in Quebec,
13 Drummondville, Quebec. And it was impressive. And we
14 said, "Sure. We'll buy your pumps and put them in."
15 So we became a Houle dealer then.

16 Q. Did it cost you? I mean, did you have to
17 pay Houle to become a distributor?

18 A. No.

19 Q. At the point in time that you became or
20 prior to becoming a Houle dealer, were you doing
21 manure systems? I mean, were you installing manure
22 systems to the extent --

23 A. No.

24 Q. -- of the one like the DeGroot Dairy?

25 A. Un-huh.

Page 17

1 A. Me.

2 Q. Now, is your brother still employed with --

3 A. No, he's not.

4 Q. How about your dad?

5 A. Nope.

6 Q. Any other family members involved in
7 Standley Trenching?

8 A. No.

9 Q. You've indicated that in 1994, you started
10 getting into the dairy business. What kind of work
11 were you doing in this '94 time frame in connection
12 with dairies?

13 A. We started putting in some separators for
14 some guys, Albers separators. We were contracted to
15 do small concrete walls, you know, to mount a
16 separator up on. We would install pumps. We weren't
17 in the manure equipment sales part. We were just
18 basic labor. They would hire us to do a little
19 concrete work, a little backhoe plumbing work, and
20 hook stuff up, that kind of thing.

21 Q. Now, at some point you became a Houle
22 dealer; is that right?

23 A. That's correct.

24 Q. When did that happen?

25 A. It happened in '98.

Page 19

1 Q. You were still at that point doing the
2 trenching and mostly labor-related stuff?

3 A. Mostly. And we'd do other things. We would
4 nail mats down. We were hired to put mats in. They
5 put rubber matting in free stall barns, big long
6 strips of mats in these long barns. And we were hired
7 to anchor them. We were hired to put up stanchions.
8 We were hired to put in the loops. Just basically
9 your odds and ends kind of labor jobs that go with the
10 dairy. Nothing real specific, you know, just trying
11 to make a living, basically.

12 Q. Sure. So during that time, if I understand
13 what you are telling me, it sounds like you guys were
14 essentially subcontractors, and you did whatever was
15 asked of you just about?

16 A. Yes, whatever you were told, yeah,
17 essentially.

18 Q. Now, when you became a Houle dealer, did you
19 have a geographical area?

20 A. I did.

21 Q. Can you tell me what that was?

22 A. They do it by counties. And I asked for the
23 Treasure Valley Counties, Canyon County, Ada County,
24 Payette County, and there may be a few more. And the
25 Magic Valley was done by counties, too, Twin Falls,

1 flush or manure processing that's in the bid.
 2 So if we look at page 1 of Exhibit 2, it
 3 looks like you've got various sizes of piping. Can
 4 you tell me what part of the project -- and let's
 5 start at the top -- the drain is for?
 6 A. It's for the catch of the free stall flush
 7 water.
 8 Q. So that would be at the back end --
 9 A. Of the free stalls.
 10 Q. -- of the free stalls?
 11 A. Correct.
 12 Q. Okay. And it looks like you bid 1,800 feet
 13 of 18 inch PVC pipe?
 14 A. Yes.
 15 Q. Okay. I don't see any pricing next to these
 16 pipes, or the size and lengths. Where do we find the
 17 price that you bid for?
 18 A. Well, it's kind of all put into one, and
 19 you'll find a price on the next page.
 20 Q. And that's on page 2 of Exhibit 2,
 21 \$54,429.80?
 22 A. Correct.
 23 Q. And that is for all the piping work on the
 24 dairy?
 25 A. Everything listed here.

1 Q. Is everything listed there, I mean, is that
 2 all piping that we're talking about on the first page?
 3 A. Correct. That's right.
 4 Q. Okay. Then moving down the page, you've got
 5 "flush." Is that the supply lines?
 6 A. Yes.
 7 Q. And then what is the water piping?
 8 A. The water system to water troughs.
 9 Q. And that's the bid that you didn't end up
 10 getting?
 11 A. Correct.
 12 Q. Did you ever submit a subsequent bid
 13 deducting out the pricing for the water line PVC?
 14 A. I think it's in the Beltman stuff. I
 15 never -- no. To answer your question, no.
 16 Q. Okay.
 17 A. There was a financial -- I did take the
 18 dollars out of the bid and deduct them from the
 19 overall bid, but I didn't do it as a formal bid.
 20 Q. Fair enough. I'm reading your notation at
 21 the bottom, and this may help clarify. When we were
 22 trying to put the bid together, you indicated it
 23 didn't make sense to you why the poly air pipe and the
 24 air line conduit was in with the manure equipment.
 25 A. Yeah.

1 Q. Do you remember saying that?
 2 A. Yeah.
 3 Q. Read your notation at the bottom, and maybe
 4 that will fresh your memory.
 5 A. "These materials will be delivered to job
 6 site and will include all glue. Air pipe and
 7 electrical conduit will be bid with manure equipment."
 8 There you go. That's why it's there.
 9 Q. Okay.
 10 A. "All miscellaneous parts and pieces for PVC
 11 pipe not listed will be billed on a cost plus 15
 12 percent basis."
 13 Q. Okay. And did Mr. Beltman ultimately accept
 14 your bid less the water piping?
 15 A. He did.
 16 Q. Okay. Did you enter into any kind of formal
 17 written contract with Mr. Beltman? By that, I mean, a
 18 document separate and apart from this, that you both
 19 signed saying that you would do the piping?
 20 A. Not that I'm aware of.
 21 Q. So you submitted your bid, and he tells you
 22 at some point, he told you, "You've got the job"?
 23 A. "Go for it," yeah.
 24 Q. Okay. Moving on to page 2 then, you've got
 25 a header there in the middle that says,

1 "Construction."
 2 So your construction bid, you've got a
 3 narrative here that says everything you are going to
 4 do. It looks to me like it includes all the
 5 installation of all the supply and drain lines, the
 6 airlines, the electrical lines to the run the valves,
 7 and that's it; right?
 8 A. Uh-huh, hook up the airlines to the flush
 9 valves.
 10 Q. So that's the installation of all the parts
 11 and pieces of pipe and air line, et cetera?
 12 A. Correct.
 13 Q. And that price is 59,600?
 14 A. That's right.
 15 Q. And that's in addition to the price for the
 16 material, which is set forth on page 2?
 17 A. Correct.
 18 Q. Then you go through beginning on the middle
 19 of page 3, you've got a header of "Manure Equipment."
 20 A. Mm-hmm.
 21 Q. And you've got several items listed there.
 22 A. Mm-hmm.
 23 Q. Who decided that the DeGroot Dairy needed
 24 two slope screens? Was that you or was that somebody
 25 else?

1 simplistic test that you do. You take a plastic Coke
2 bottle with the lid on it, you know, just that you
3 get, you drink Coke.

4 Q. Like the small ones?

5 A. Yeah, just anything that floats.

6 Q. Okay.

7 A. And you throw it in the lane and you time
8 it, and there is -- and Troy can help you with that.
9 There is a formula for that.

10 Q. Do you recall what --

11 A. I do not. It's a fairly simple deal. I
12 mean, it's not true science, but it gives you an idea
13 what your water flow is.

14 Q. Do you recall what, based on this testing
15 that you did with the Coke bottle, what your
16 estimation of the gallons per minute that you were
17 getting at the top of the free stalls?

18 A. I don't remember that number.

19 Q. Do you remember which free stall you tested?

20 A. I do not.

21 Q. Did you test more than one?

22 A. I think we did.

23 Q. Did you test all of them?

24 A. Probably not the hospital barn. The north
25 barn was on first. And the south barn was -- I'm

1 problems you believed were caused by the sand being in
2 the beds?

3 A. Repeat that question.

4 Q. What problems do you attribute with the
5 system's functioning that were caused by the sand in
6 the beds?

7 A. On a percentage basis, or just you want me
8 to go through it specifically?

9 Q. Yes, please.

10 A. The problem with using pit run for bedding
11 is that it doesn't flush all that well. There will be
12 rocks left in the lanes. Rocks have a way of
13 attracting manure in your flush system and
14 complicating your flush. But then, of course, it all
15 goes down to the drains and drains over to your pumps,
16 and, basically, just trashes your pumps.

17 Then what sand you do pump, which is
18 considerable, goes into your separation system, your
19 screens, and your roller presses, and tears the shit
20 out of them.

21 Q. And I'm assuming I know the answer to this
22 question: What was your understanding of the bedding
23 that was going to be used at the DeGroot Dairy?

24 A. It was going to be compost.

25 Q. Who told you that?

1 going the say later. It seems like sometime later,
2 six months, or something like that. It was later.

3 Q. By the time you tested that, had problems
4 been brought to your attention with the operation of
5 the flush system?

6 A. Yes.

7 Q. At that point in time when you went out and
8 did the tests after you received -- I'm assuming you
9 received complaints from Chuck?

10 A. I did.

11 Q. When you went out and tested it, from your
12 perspective, was it working fine?

13 A. The system?

14 Q. Yes.

15 A. It was not.

16 Q. What was wrong with it at this point in time
17 when you come out in response to Chuck's complaints?
18 What wasn't working right?

19 A. I would say, the pumps and the separators.
20 The flush worked fairly well, but he had bedded with
21 pit run, and that created some problems.

22 Q. Yeah. And I know you've contended that
23 throughout this, and even before the litigation
24 started, and that's an issue we'll explore separately.

25 But from your perspective, tell me what

1 A. I believe Chuck did.

2 Q. Do you remember when Chuck told you that?

3 A. I do not.

4 Q. Anyone else present when Chuck told you
5 that?

6 A. I couldn't remember.

7 Q. Do you know how long Chuck used sand in the
8 free stall beds?

9 A. I do not.

10 Q. So you don't know when he switched to
11 compost?

12 A. No.

13 Q. You've talked about rocks. Do rocks
14 naturally occur, based on your experience? I mean, do
15 they show up in the feed?

16 A. They do.

17 Q. Do cows track them in, or bring rocks into
18 the free stalls coming through the holding pens and
19 whatnot?

20 A. They do.

21 Q. So at some level, I would assume, the
22 equipment has got to be able to handle rock?

23 A. It does.

24 Q. And, in fact, correct me if I'm wrong, the
25 slope screens have rock collectors on them?

1 Q. During the time that you are going through
2 the bidding and ultimately starting to work on this
3 project, from your perspective, was your contract with
4 Stan Beltman, or Beltman Construction, or Chuck
5 DeGroot?

6 A. Beltman.

7 Q. Okay. Did you, during this time period that
8 you are bidding the project and working on it -- and
9 you understood that it was Chuck's dairy; right? I
10 many, it wasn't Beltman's dairy?

11 A. Sure.

12 Q. And you knew that Chuck would ultimately put
13 his cows on there and operate that dairy with your
14 system?

15 A. Correct.

16 Q. Have you since, at any point, talked to Stan
17 Beltman about this project or the lawsuit?

18 A. I have not.

19 Q. When Mr. Beltman asked you to give the bid,
20 ultimately says, "You guys are going to get the job to
21 do what you had bid," what did you view as the purpose
22 of the work you were doing?

23 MR. KELLY: Object to the form.

24 Q. (BY MR. DINIUS) You can answer it.

25 A. What did I view? I viewed it as we were

1 Q. You don't keep any on hand?

2 A. You never know when you are going to get a
3 job.

4 Q. Sure. Had you done any installations of
5 Houle equipment as a Houle distributor prior to
6 undertaking Chuck's project?

7 A. I have.

8 Q. Tell me what projects those were.

9 A. I did a deal for a guy in California,
10 Hanford, California, a separator and a pump. And I
11 did Roadas, who are in Middleton, a separator and
12 pumps and tanks. I probably, if I had my records, I
13 could -- there is probably more pump installs out
14 there. And you are talking -- if I understand the
15 question right -- by the time we installed Chuck's,
16 had I installed or sold other Houle equipment?

17 Q. Right.

18 A. And I'm sure, I have. I couldn't -- those
19 two are separator jobs, and I think you are more
20 pointedly asking about that. But we have done some
21 pump installs, I would think in '99, but I can't
22 remember.

23 Q. How many jobs prior to the DeGroot Dairy
24 project were you responsible for picking the correct
25 size pipe and the pump on a flush system on the supply

1 going to do backhoe work for flush pipe and drains,
2 and supply the manure equipment.

3 Q. Did you also view that part of your role was
4 picking the correct size pipe for the flush system?

5 A. I would say so, yes.

6 Q. Okay. The same question with respect to --
7 I mean, your role was to pick the correct size pump to
8 deliver adequate water to flush the alleys?

9 A. I would think so.

10 Q. And you also picked the size of the
11 drainpipe; didn't you?

12 A. At least in my bid, yeah.

13 Q. Okay. You indicated that -- I think you
14 did, and I'm not trying to put words in your mouth.
15 You bid the 18-inch drainpipe. From everything I've
16 seen, it looks like 15 inch got installed. You
17 indicated that you think maybe somebody told you to
18 put the 15 in, but you don't remember who, or when, or
19 anything like that.

20 At that point in time, did you have a stock
21 pipe of 15-inch pipe sitting in your yard, or your
22 warehouse, or wherever?

23 A. No.

24 Q. Do you order this pipe as you need it?

25 A. As per job.

1 side?

2 A. Two that I can think of offhand.

3 Q. What would those two be?

4 A. Van Beek dairy in Jerome, and Pete DeGroot
5 in Kuna.

6 Q. Okay. Any problems with either of those
7 systems?

8 MR. KELLY: Object to form.

9 THE WITNESS: Pete DeGroot had to change his
10 flush valves. I had bought those flush valves off of
11 a company in Jerome, and I changed those to Houle
12 flush valves. That's about the only problem I can
13 think of.

14 Q. (BY MR. DINIUS) Okay. Going back to, you
15 know, we talked earlier this morning about your goal
16 of 2,500 gallons per minute to flush the alleys at the
17 DeGroot Dairy. When you are arriving at that goal, do
18 you take into consideration at all, the amount of cows
19 that are going to be in the free stalls, or do you
20 just assume that this thousand foot free stall is
21 going to be full, and that's a thousand cows?

22 A. Yeah, I assume the barns will be full.

23 Q. Do you, at the point in time that you were
24 bidding and working on the project, did you have any
25 idea how many cows DeGroot's were permitted for?

1 A. Probably. I don't remember it specifically,
 2 but I probably did.
 3 Q. Would you have needed to know that in
 4 connection with the work you were doing with the flush
 5 system, the manure equipment, and piping --
 6 A. Not what they are permitted for.
 7 MR. KELLY: Let him finish.
 8 THE WITNESS: I'm sorry.
 9 Q. (BY MR. DINIUS) In connection with the work
 10 you were doing, we talked about the flush system,
 11 piping, manure equipment. Do you need to know how
 12 many total animal or total animal units the dairy is
 13 permitted for in connection with determining correct
 14 sizes, pieces of equipment, pump sizes, et cetera?
 15 A. You do.
 16 Q. And you would have factored that into your
 17 calculation?
 18 A. I would have.
 19 Q. If you didn't know, would you ask somebody,
 20 "How big is this place going to be? What's he
 21 permitted for?"
 22 A. I would.
 23 Q. Do you remember specifically having those
 24 conversations with either Chuck, or Tom, or Stan
 25 Beltman?

1 Q. Who?
 2 A. Chuck.
 3 Q. Tell me what you think Chuck did to cause
 4 the damages that he's complaining about.
 5 A. He neglected his maintenance, and bedded
 6 with pit run.
 7 Q. Let's take each of those: neglected
 8 maintenance and pit run. Well, we've talked about the
 9 pit run, I think; haven't we?
 10 A. Briefly.
 11 Q. Okay. Tell me what, from your perspective,
 12 Chuck did in using pit run to cause the problems with
 13 the manure handling system.
 14 A. In the system that he had, the simple
 15 reception pit pump-up over separator, he put no
 16 provisions in that for the sand and the rock that he's
 17 going to get off that. So all the sand and rock go to
 18 the pumps, and the pumps literally were plugged
 19 repeatedly with sand and rocks.
 20 The screen part of the separator, you would
 21 get so much sand into the roller, and the roller sat
 22 below the screen -- you've seen how it sits up -- that
 23 the sand would build in there and literally stop the
 24 rollers from rolling. And he wouldn't clean it out.
 25 He would, but he wouldn't clean it out enough to --

1 A. I do.
 2 Q. Who?
 3 A. All of the above.
 4 Q. Okay. But you just don't remember the
 5 specific number?
 6 A. No.
 7 Q. That's fair, because I don't either.
 8 Do you contend that anyone else is to blame
 9 for the problems with the manure handling system at
 10 the DeGroot Dairy?
 11 MR. KELLY: Object to the form.
 12 MS. WHARRY: Object to the form.
 13 THE WITNESS: Do I contend -- repeat the
 14 question.
 15 Q. (BY MR. DINIUS) Do you contend that
 16 anybody, aside from you and your company, not you
 17 individually. But when I say "you," I mean, Standley
 18 & Company. Do you contend that anybody else out there
 19 is responsible for the damages that Chuck contends
 20 have occurred as a result of this manure handling
 21 system?
 22 MR. KELLY: Same objection.
 23 MS. WHARRY: Object to the form.
 24 Q. (BY MR. DINIUS) You can still answer.
 25 A. I do.

1 this thing would work, but it worked very, very poorly
 2 because of that.
 3 Q. What was the tension on the roller presses
 4 set at initially?
 5 A. I would have no idea.
 6 Q. Who would know that in your company?
 7 A. I don't think that we would have somebody
 8 that would know. When you start running rock and
 9 gravel through them, it's not a question, really. I
 10 mean, you've got to let it happen. There was no
 11 alternative whether you have the right amount of
 12 tension or not. They were becoming rock crushers
 13 basically. And you would watch them spit rocks out,
 14 and it was just a nightmare.
 15 Q. Well, shouldn't the slope screen rock
 16 guards, or whatever, have caught those before they hit
 17 the roller press?
 18 A. Yeah, and I'm sure they did. And they were
 19 probably filled within seconds. The magnitude and
 20 volume of the sand and gravel was just astounding.
 21 You are filling thousand cow barns or thousand foot
 22 barns with -- you know, that bedding space is 16-foot
 23 wide, maybe 17 -- I don't know what his exact number
 24 is -- with sand and gravel, and it's tremendous.
 25 Q. And I've heard you repeatedly refer to it as

1 flooding" in this corner where this northern most free
2 stall comes down and hits the drain grate, or the
3 gutter, whatever you call it, the area that it enters
4 the drainpipe right here (indicating)? I mean, have
5 you seen it --

6 A. I have not.

7 Q. -- where it's been flooded out like that?

8 A. Un-huh.

9 Q. Maybe we need to get you out there.

10 A. Okay.

11 Q. Is there going to be anybody at Standley
12 that knows how deep this line is?

13 A. I wouldn't think so.

14 Q. When they were doing the rock blasting
15 trying to get the depth, or to get the trench opened
16 up, were you on site?

17 A. I remember this discussion. We talked about
18 it.

19 Q. Were you on site when they were actually
20 doing the blasting?

21 A. No, I was not.

22 Q. Was Jeff there?

23 A. I would not know.

24 Q. Now, you've contended in this litigation
25 that Beltman designed the manure handling system.

1 Q. That's it?

2 A. That's all that caused me concern, yes, sir.

3 Q. Okay. And we've talked about what you
4 believe the sand and gravel did to the system that
5 caused it to maybe not function as intended or
6 designed. You'd agree with me, wouldn't you, that the
7 use of sand or pit run, as you've characterized it, in
8 the free stalls has nothing to do with the flush side
9 of the system?

10 A. I would say you are correct, other than the
11 fact that where you are concerned with lane
12 cleanliness, it will make a difference there.

13 Q. Okay. But --

14 A. But as per this pump, bringing water to this
15 valve, sand has no issue with that.

16 Q. And in one of your discovery responses, you
17 indicated the system was installed in the summer of
18 '99. That may have been a typo.

19 I mean, based on everything we've been
20 talking about today, you'd agree with me that the
21 project began late 1999 and was finished in April of
22 2000?

23 A. Correct.

24 Q. So it wasn't installed in the summer of '99?

25 A. Well, you are talking about the pumps and

1 A. I don't think I have.

2 MR. KELLY: I was going to object to
3 mischaracterization.

4 Q. (BY MR. DINIUS) Well, maybe your counsel
5 characterized it that way.

6 Do you contend that Beltman designed the
7 manure handling system?

8 A. I do not. I do not know who designed it.

9 Q. When you say, "You don't know who designed
10 the manure handling system," what specific pieces of
11 the system are you referring to? I mean, are we
12 talking about the cells?

13 A. Anything from in here (indicating), back to
14 here (indicating).

15 Q. So from this junction box back, you don't
16 know who designed it?

17 A. All I did was hookup my equipment.

18 Q. Were you there when the equipment was set?
19 And by that, I mean, the slope screens and the roller
20 presses.

21 A. I was.

22 Q. Did you see anything in connection with
23 hooking the equipment up that caused you any concern
24 with the operation of the system?

25 A. Just the sand and gravel.

1 the separator?

2 Q. Well, I'm talking about the system. I mean,
3 the work on the system from Standley's perspective was
4 not done into 2000?

5 A. That's correct.

6 Q. Did you ever talk to Chuck about the use of
7 compost in the free stalls --

8 A. Yes.

9 Q. -- versus sand?

10 A. Not versus sand. Just we had discussions on
11 compost.

12 Q. At some point were you on the dairy, and did
13 you observe either sand in the bed, or the placement
14 of the sand in the beds?

15 A. I was.

16 Q. Which of those? I asked you -- that was
17 another kind of bad question. I asked you two
18 questions at once.

19 A. We walked through the free stalls just prior
20 to cows coming and found the sand and gravel in the
21 bed.

22 Q. When you say "we," who was with you?

23 A. I think Jeff and Troy and I were there that
24 day. And Jeff called us and said, "You can't believe
25 this. You need to see this." And I was like, "Whoa."

1 A. Or save --
 2 Q. -- actually, you were going to put two
 3 screens on one roller?
 4 A. On one roller, thinking I could save the
 5 price on one roller.
 6 (Deposition Exhibit No. 17 was marked for
 7 identification.)
 8 Q. (BY MR. DINIUS) And Exhibit 17, which is
 9 the package packing slip for the slope screen and
 10 roller; right?
 11 A. Yes.
 12 (Deposition Exhibit No. 18 was marked for
 13 identification.)
 14 Q. (BY MR. DINIUS) Handing you what's been
 15 marked as Exhibit 18. I assume that this is Troy
 16 Hartzell's order for the slope screen and the roller
 17 separator?
 18 A. Mm-hmm.
 19 Q. In the middle there it says, "Jeff will send
 20 answers for 16 questions."
 21 A. Mm-hmm.
 22 Q. Do you know what that has to do with?
 23 A. They have a questionnaire. They were just
 24 developing their questionnaire for these kinds of
 25 questions. Not everybody has three-phase power.

1 was never talked about being anything else. There was
 2 never any conversation any other way than compost.
 3 Q. Was there ever any discussions along the
 4 lines that compost would ultimately be used? Because
 5 correct me if I'm wrong, your manure handling
 6 equipment, it makes compost; right?
 7 A. It makes dry fiber --
 8 Q. That is then --
 9 A. -- composted.
 10 Q. -- aged and dried and turned into compost?
 11 A. Right.
 12 Q. So that the start-up of a dairy, you
 13 wouldn't have any compost; would you?
 14 A. Not from your place, no, but you could
 15 purchase it, just like you purchased the pit run.
 16 Q. Is it expensive?
 17 A. I don't know.
 18 Q. Do you know if it's more expensive than pit
 19 run or sand?
 20 A. I wouldn't.
 21 Q. Well, do you recall any conversations along
 22 the lines that, once the dairy is up and running,
 23 compost will be used?
 24 A. It just was understood that the compost was
 25 going to be the bedding source.

1 Voltage -- the voltage number varies, depending on
 2 where you go. We want to know what the bedding is,
 3 length of lanes, just like you said, width of lanes,
 4 elevation. I can't remember offhand. But questions
 5 like that. Just general, you know, "What are we
 6 trying to do here questions?"
 7 Q. I see on there, Troy has written, "Bedding:
 8 compost."
 9 A. Mm-hmm.
 10 Q. Do you know where he got that information
 11 from? Is that something he got from you?
 12 A. I would think not.
 13 Q. Okay.
 14 A. I don't know where he got it from.
 15 Q. Okay. Did you place the order with Troy?
 16 A. I can't say that I placed an order. What we
 17 would do is sit down, he's the Houle guy. And we
 18 would talk about all the things that we're going to
 19 do, and he writes the order.
 20 Q. So you don't remember telling him that the
 21 bedding was going to be compost?
 22 A. Well, I'm sure I did. It was just
 23 understood that it was a compost bedded dairy.
 24 Q. Tell me what you base that understanding on.
 25 A. Conversations with Chuck and Beltman. It

1 Q. From the beginning on?
 2 A. Yeah, from day one.
 3 Q. And I mean, you base that understanding on
 4 Chuck saying that specifically?
 5 A. Yes.
 6 Q. And he said that to you?
 7 A. Repeatedly.
 8 Q. Okay.
 9 A. More than once.
 10 Q. Okay. The first time he said it to you,
 11 where were you at?
 12 A. I can't remember.
 13 Q. Was anybody with you?
 14 A. I couldn't remember.
 15 Q. Was it an in person meeting or telephone?
 16 A. It was face to face.
 17 Q. You said repeatedly. I mean, how often did
 18 Chuck tell you?
 19 A. I would say probably three to five times.
 20 Q. Over the course of how many weeks or months?
 21 A. Since the beginning.
 22 Q. So over the course of several months, he
 23 told you, you said three to five times?
 24 A. And I'm generalizing. I mean, once you kind
 25 of understand something, you don't go over it and over

1 right, we wouldn't have been out there." Jeff has
 2 already done the paperwork and submitted it. Do you
 3 then throw away that paperwork or put it in the file?
 4 A. Usually what I'll do today, if we do those
 5 sorts of things, I put no charge on it and send it to
 6 the customer. So he knows that we were there, and we
 7 did this, and he has a record, also.
 8 And in our Chuck DeGroot period, we did not
 9 do that. We would just do the work, and forget about
 10 it.
 11 Q. Well, was there any specific instances with
 12 respect to the DeGroot Dairy, that John, or Jeff, or
 13 Mr. Bullock sent paperwork to you for work that they
 14 had done, that you decided not to charge Chuck for?
 15 A. I would think so. I don't have a specific
 16 in mind. But it usually works that way.
 17 Q. Well, what would you then do with the
 18 service order -- or I can't remember the exact
 19 terminology for the document that you use -- but you
 20 get this from Jeff. What do you do with that? Do you
 21 throw it away?
 22 A. I do or did.
 23 Q. Okay.
 24 A. And I've changed that, as I've said.
 25 (Deposition Exhibit No. 42 was marked for

1 talking about is the bid?
 2 A. Yeah.
 3 Q. No. 2 on page 1 of Exhibit 42, you wrote,
 4 "Standley's expertise was used as long as Mr. Beltman
 5 agreed with it. Those times when he did not, he hired
 6 others to do what he wanted."
 7 What are you talking about there?
 8 A. Oh, like the back end with the drains and
 9 that.
 10 Q. What about the drains did Mr. Beltman not
 11 agree with your approach to?
 12 A. Well, like I told you, we put one drain in,
 13 I would say, the hospital barn or the middle barn, and
 14 they didn't agree with that. So they dug it out and
 15 made it drain the other way.
 16 Q. So he didn't like the slope it was on?
 17 A. You would have to ask him.
 18 Q. Well, what do you remember? I mean, did he
 19 ever tell you the reason why it was dug up?
 20 A. Not that I recall. I don't think there was
 21 a reason. And, again, it goes back to that
 22 relationship thing, he didn't like what I did.
 23 Q. Well, did he ever tell you specifically what
 24 he didn't like about the drain line that your company
 25 laid behind the hospital barn?

1 identification.)
 2 Q. (BY MR. DINIUS) I'm going to hand you
 3 what's been marked as Exhibit 42. Do you recognize
 4 that document?
 5 A. Just some notes that I've taken.
 6 Q. And that is your handwriting that's set
 7 forth in the three pages of Exhibit 42?
 8 A. It is.
 9 Q. When did you write those notes?
 10 A. I don't know.
 11 Q. Was it after the litigation was commenced or
 12 before?
 13 A. Well, I'm sure it was after the litigation,
 14 I would think.
 15 Q. Okay. I think we've already covered one, I
 16 asked you this morning. You are not aware of any
 17 actual contract between your company and Beltman for
 18 the services and material you provided at the DeGroot
 19 Dairy?
 20 A. Not as -- I mean, other than what you've
 21 seen, no.
 22 Q. Okay. And the only thing we've seen is your
 23 bid; right?
 24 A. Yeah.
 25 Q. So far? I mean, is that what you are

1 A. No.
 2 Q. Did he ever make any reference that it was
 3 off grade?
 4 A. No.
 5 Q. Because it doesn't make sense to me that he
 6 would go dig something up for no reason.
 7 A. Me either.
 8 Q. Did you ever ask him about that?
 9 A. No.
 10 Q. Say, "It's perfectly fine. Why did you dig
 11 it up?"
 12 A. I didn't.
 13 Q. Is that about the point you left the job,
 14 when he dug that back up?
 15 A. (Witness nodding head.)
 16 Q. Is that a "yes"?
 17 A. Well, I was trying to think. It's kind of a
 18 maybe yes. It's in and around that time, yeah.
 19 Q. Okay. You've got a sub (a) under No. 2 on
 20 Exhibit 42. "Hired others to do some drain line work
 21 after thinking Standley's incapable." What do you
 22 mean when you write that?
 23 A. That's just what we were talking about.
 24 Q. Well, are we talking about Tom Beltman now,
 25 not Stan?

EXHIBIT B

DeGroot v. Standley
Affidavit of Mike Kelly

EXHIBIT B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

COPY

CHARLES DeGROOT; and DeGROOT)

FARMS, LLC,)

Plaintiffs,)

vs.)

KURT STANDLEY, SCOTT STANDLEY)

and STANDLEY TRENCHING, INC.,)

d/b/a STANDLEY & CO.; and)

J. HOULE & FILS, INC., a)

Canandian corporation,)

Defendants.)

Continued...

THE DEPOSITION OF CHARLES DeGROOT

OCTOBER 22, 2002

REPORTED BY:

MONICA M. ARCHULETA, CSR NO. 471

Notary Public

M & M Court Reporting Service, Inc.

SOUTHERN
1-800-234-9611

NORTHERN
1-800-879-1700

■ BOISE, ID
208-345-9611

■ POCATELLO, ID
208-232-5581

■ COEUR D'ALENE, ID
208-765-1700

■ TWIN FALLS, ID
208-734-1700

■ ONTARIO, OR
503-881-1700

■ SPOKANE, WA
509-455-4515

1. A He was to take care of the manure
 2 handling.
 3 Q And when you say "take care of." What do
 4 you mean?
 5 A To provide for the flush system. And to
 6 provide for the manure handling.
 7 Q Did you have a contract with Standley?
 8 A No.
 9 Q Did Beltman have a contract with Standley?
 10 A I cannot answer that.
 11 Q Did someone advise -- and by "someone" I
 12 mean either you or Beltman, or someone working for
 13 one of you -- provide Standley any written
 14 specifications on what Beltman wanted for all of
 15 this?
 16 A That is, I think, in the area of the
 17 contractor. That is his area of expertise.
 18 Q So the contractor, to your recollection,
 19 was supposed to give Standley the specs on what was
 20 to be done? Is that right?
 21 A Could you rephrase that?
 22 Q Could you read that back, please?
 23 (Record was read back.)
 24 THE WITNESS: That was between Beltman and
 25 his subcontractors. Because I had confidence in

1. my question.
 2 THE WITNESS: Their equipment, I had a lot
 3 of the maintenance with that. Because when we
 4 started we weren't up front managing the dairy. We
 5 were in the back scooping manure.
 6 Q (BY MR. McCURDY) Which portions of the
 7 Houle equipment needed -- well, let me back up.
 8 Is it your experience that equipment at
 9 the dairy needs maintenance?
 10 A Yes.
 11 Q So when you say the Houle equipment needed
 12 a lot of maintenance, are you saying that it needed
 13 more than ordinary?
 14 A Yes.
 15 Q What was it about the design that Houle
 16 was involved in that required an extraordinary
 17 amount of maintenance on the Houle equipment?
 18 A The pumps were always -- I had to replace
 19 the casing a number of times.
 20 Q How many?
 21 A At least twice.
 22 Q Over what period of time?
 23 A The first eight months.
 24 Q Why? What was happening to the casing?
 25 A The casing became worn because of what

1 Beltman as being the contractor. As far as to whom
 2 he let his subcontracts to.
 3 Q (BY MR. McCURDY) Did you provide any
 4 specifications to Standley or anyone from Standley?
 5 A No.
 6 Q Did you provide any specs to Houle or
 7 anyone from Houle?
 8 A No.
 9 Q Did Beltman?
 10 A Beltman can answer that question. I
 11 can't.
 12 Q So you don't know?
 13 A I do not know.
 14 Q The reason I was asking. See, you have
 15 sued my client, saying that they were faulty in
 16 their design in this project. And I asked in the
 17 interrogatories about the basis for that. And I
 18 really didn't get any information.
 19 So as you're sitting here today do you
 20 know of anything that my client, Houle, did wrong?
 21 MR. DINIUS: And I'm going to object to
 22 the form. I think it mischaracterizes the claims.
 23 To the extent you can answer his question as to
 24 problems with Houle equipment, go ahead.
 25 MR. McCURDY: No, what Houle did wrong was

1 was -- there was sand in the bedding.
 2 Q How did the sand get in the bedding?
 3 A Initially we did the beds with sand. But
 4 the long-term was to use the separated manure as
 5 compost. Which we did.
 6 Q But initially you used sand; correct?
 7 A Correct.
 8 Q Isn't it true that the specs that were
 9 given to Standley, assuming any were given, and the
 10 specs that were relayed to Houle, indicated that
 11 compost was going to be used as bedding? Isn't that
 12 true?
 13 MR. DINIUS: Object to the form.
 14 MR. McCURDY: What is wrong with the form?
 15 MR. DINIUS: Number one, it is
 16 argumentative. Number two, he has already testified
 17 he didn't give any specs to Standley or Houle.
 18 Q (BY MR. McCURDY) Can you answer the
 19 question?
 20 MR. DINIUS: If you know the answer.
 21 THE WITNESS: Could you rephrase -- repeat
 22 the question, please?
 23 Q (BY MR. McCURDY) Isn't it true that if
 24 Standley and Houle were told anything about bedding,
 25 they were told that compost was going to be used?

1 MR. LEWIS: Initially.
 2 MR. McCURDY: Initially.
 3 MR. DINIUS: And, again, I'm going to
 4 object. You're asking him to speculate. If they
 5 were told isn't it true that.
 6 THE WITNESS: I do not know.
 7 Q (BY MR. McCURDY) When you sue my client,
 8 saying that there is a problem with their equipment.
 9 And then you tell me there is sand in their pumps.
 10 And then you tell me you don't know what Houle was
 11 told about what was going to be used as bedding.
 12 How can you say my people erred when you don't
 13 even know what they were told?
 14 A I have --
 15 MR. DINIUS: I'm going to object again.
 16 The pumps are not the only issue in this litigation.
 17 MR. McCURDY: I'm asking about the pumps.
 18 I understand that.
 19 MR. DINIUS: You previously used a
 20 hypothetical where sand was used in a dairy. Houle
 21 is in the business of manufacturing -- designing and
 22 manufacturing and marketing manure handling
 23 equipment. I mean, I think that is the basis of his
 24 claim. Is that the equipment they designed that
 25 Standley sold to him did not work as intended.

1 Q (BY MR. McCURDY) What was Houle told
 2 about your intention as to bedding?
 3 A I do not know if that question was
 4 addressed. But when I started we used sand with the
 5 intention of going to compost.
 6 Q Sand with rock in it; correct?
 7 A There was some rock in it.
 8 Q Did you have any written agreement with
 9 Houle?
 10 A No.
 11 Q Do you know whether Beltman had any
 12 written agreement with Houle?
 13 A I do not know.
 14 Q You hired Beltman as a contractor to
 15 provide you with a functioning dairy. Correct?
 16 A Correct.
 17 Q And your complaint tells us that you
 18 believe that you were not provided a functioning
 19 dairy. Correct?
 20 A Correct.
 21 Q Why didn't you sue Beltman?
 22 MR. DINIUS: Object to the form.
 23 THE WITNESS: Because he had subcontracted
 24 the manure equipment.
 25 Q (BY MR. McCURDY) Wasn't part of his job

1 to get good subs?
 2 A That's what my intention was. That he
 3 would get good subs, yes.
 4 Q Your lawsuit says he didn't. So why
 5 didn't you sue him for not getting you good subs?
 6 MR. DINIUS: Object to the form.
 7 THE WITNESS: Because I didn't.
 8 Q (BY MR. McCURDY) Is it your position as
 9 you sit here today that Beltman did nothing wrong?
 10 A I'm not saying that Beltman did not do
 11 anything wrong.
 12 Q What did he do that was wrong then? Let's
 13 get into that.
 14 A Well, he hooked me -- like I say, I have a
 15 person that -- when we built the dairy I thought he
 16 was going to get the right subs to build a dairy for
 17 me.
 18 Q And from your perspective he didn't.
 19 Correct?
 20 A He hired Standley & Company.
 21 Q And you're saying they didn't do the job.
 22 Right?
 23 A His subcontractor did not do the job.
 24 Q And that is Standley?
 25 A Correct.

1 Q From your perspective. Correct?
 2 A Yes.
 3 Q You told me a moment ago that you don't
 4 know what Beltman told Standley about the
 5 specifications for the job.
 6 Correct?
 7 A I do not know what conversation they had.
 8 Q So as far as you know Standley provided
 9 everything Beltman said they should provide.
 10 Correct? As far as you know?
 11 A As far as I know.
 12 Q Okay. And as far as you know Houle
 13 provided everything that they were told to provide.
 14 Correct? As far as you know?
 15 A Yes.
 16 Q So why didn't you sue Beltman again?
 17 We've talked about the things he has done wrong.
 18 Let me ask you this first. I withdraw that earlier
 19 question.
 20 You paid Beltman money pursuant to the
 21 contract. Correct?
 22 A Correct.
 23 Q How much did you pay him?
 24 A For?
 25 Q Total. How much have you paid him?

1 A Yes.
 2 Q Figure 2 on page six, Bates 77, has a
 3 rectangular dotted line figure in the middle of the
 4 system. Do you see that?
 5 A Yes.
 6 Q It says "sand trap." Do you have one of
 7 those now?
 8 A Yes.
 9 Q And why do you have it?
 10 A To get the sand that accumulates. And to
 11 flush the compost out.
 12 Q This proposal was one year and two weeks
 13 ago. Or proposal report. So is it fair to say that
 14 as of October 2001 there is still sand involved in
 15 your system somehow?
 16 A Sand blows in from the atmosphere.
 17 Because we opened a cow up the other day and she had
 18 sand in her gut.
 19 Q In October of 2001 were you using sand as
 20 bedding?
 21 A No.
 22 Q What were you using?
 23 A Compost.
 24 Q When did you start using compost?
 25 A About - well, I bought compost. So it

1 was shortly - it was in the first few months.
 2 Q When?
 3 A I would say either May or June.
 4 Q So you started operation - you are
 5 talking about May or June of 2000?
 6 A Correct.
 7 Q And you started on April 19, as I recall.
 8 And within a few weeks you had compost for bedding?
 9 A We were getting compost.
 10 Q Were you still using sand and compost?
 11 A No.
 12 Q When did you stop using sand as bedding?
 13 A It was only the initial to fill the
 14 stalls.
 15 Q When did you stop using sand as bedding?
 16 A We started on the 20th. That is when our
 17 first production was. So I would have to say the
 18 20th of April.
 19 Q When did you stop using sand as bedding?
 20 A When did we stop using sand as bedding?
 21 Q Right.
 22 A On freestall number one we stopped. It
 23 was in April. We filled the freestalls with sand.
 24 And after that we put compost in.
 25 Q When the compost was in place the sand was

1 cleaned out, wasn't it? Or how did you go through
 2 the change?
 3 A The cows kicked a little bit of the sand
 4 out. And then we refilled it in with compost.
 5 Q At what point was the sand completely out
 6 of the freestall number one area?
 7 A That question is better to be answered by
 8 Ernest.
 9 Q Okay. On page one of the report. And I'm
 10 almost done talking about this. Just a couple of
 11 things I have to find out for foundation. In the
 12 introduction. The next-to-the-last sentence of the
 13 first paragraph says, "The screens have not worked
 14 properly."
 15 Upon what does he base that?
 16 MR. DINIUS: Can you ask that again, Bill?
 17 I'm not sure I'm tracking with you.
 18 MR. McCURDY: There is a sentence in the
 19 report. "The screens have not worked properly."
 20 And I'm asking your client if he knows upon what
 21 Mr. Burke bases that statement.
 22 THE WITNESS: The slope screens, I think,
 23 is what he is referring to. And they did not work
 24 properly for the removal of our manure.
 25 Q (BY MR. McCURDY) Well, my question is,

1 upon what does he base that? I can't tell by
 2 reading this report.
 3 Do you know?
 4 A No.
 5 Q In the report where does it tell us what
 6 Standley was given by Beltman by way of
 7 specifications on what they were to provide to this
 8 dairy?
 9 MR. DINIUS: Object to the form.
 10 THE WITNESS: They were hired as experts
 11 in manure handling.
 12 Q (BY MR. McCURDY) Where does it say in
 13 this report what they were given by way of
 14 specifications as to what you wanted your dairy to
 15 do?
 16 A It does not.
 17 Q Where does it say in here what Houle was
 18 told by Beltman as to the specifications Houle was
 19 expected to meet as part of this dairy project?
 20 MR. DINIUS: Object to the form.
 21 THE WITNESS: I go back to people that are
 22 available. And he was one that put in manure
 23 systems. And we went with his expertise.
 24 Q To your understanding, is Houle the only
 25 company on the face of the earth that makes manure

1 A They are not in operation.
 2 Q Where are the pumps being stored?
 3 A The pumps are still in the pit where they
 4 pump from.
 5 Q Where are the separators?
 6 A The separators are on the wall -- the
 7 slope screens, that is what you are speaking about?
 8 Q Right.
 9 A They are on the concrete wall yet.
 10 Q But they are not being used; is that
 11 right?
 12 A Correct.
 13 Q The system just goes around them?
 14 A Yes.
 15 Q Are there any other pieces of Houle
 16 equipment that you purchased that you aren't using?
 17 A The roller press.
 18 Q Where is that?
 19 A That is on the place.
 20 Q Where is it being stored? Or left in
 21 place?
 22 A We pulled it to the side in the field.
 23 And the conveyor belt that ran between the two
 24 presses is there yet. And also the stacker. But
 25 that is not Houle.

1 MR. DINIUS: That is what he asked you.
 2 Q (BY MR. McCURDY) What kind is it?
 3 A You mean like --
 4 MR. DINIUS: How about who installed it?
 5 THE WITNESS: It was on a Standley
 6 floater. On the flush pump. I should say on the
 7 Houle flush pump.
 8 MR. McCURDY: I'm obviously not done. But
 9 Rob has some stuff he wants to ask you. So I
 10 relinquish the floor.
 11 MR. LEWIS: You're stepping down now?
 12 MR. McCURDY: I am.

EXAMINATION

15 BY MR. LEWIS:
 16 Q Mr. DeGroot, my name is Rob Lewis. And I
 17 represent the Standley group of defendants in this
 18 case. Would you grab Exhibit 1 for a second. It is
 19 your deposition notice.
 20 Do you see that?
 21 A Yes.
 22 Q I want you to look at the first page of
 23 it. You are listed as a plaintiff in the case.
 24 Do you see that?
 25 A Yes.

1 Q Where is the conveyor belt being stored?
 2 Out in the field?
 3 A Conveyor belt? It is still on the
 4 conveyor. And there is various belts -- there were
 5 various belts that had come off that are around
 6 there.
 7 Q You had Dairy Services come on the place
 8 and do some work; correct?
 9 A Yes.
 10 Q Have you had any other company like Dairy
 11 Services come on and do additional work?
 12 A Well, Town & Country Electric. They had
 13 to come in and put in some larger panels.
 14 Q Anyone else?
 15 A Idaho Power.
 16 Q What did Idaho Power do?
 17 A They replaced some bayonet fuses in their
 18 transformer.
 19 Q Why did that have to be done?
 20 A Apparently there was a motor in the system
 21 that caused that to happen.
 22 Q Whose motor?
 23 A It was the motor on my floater pump.
 24 MR. DINIUS: He asked you whose motor.
 25 THE WITNESS: Whose motor?

1 Q And DeGroot Farms, LLC is also listed.
 2 And I think you told us earlier that should be
 3 DeGroot Dairy, LLC.
 4 A Yes.
 5 Q Can you tell me why you have a personal
 6 claim in this case? What did Standley or Houle do
 7 to cause you personal damages as opposed to --
 8 A It should be DeGroot Dairy, LLC.
 9 Q As you sit here right now are you stating
 10 you do not have a claim personally, but only the LLC
 11 has a claim?
 12 A Well, that is the dairy facility; yes.
 13 Q So you have no personal claim, then?
 14 Correct?
 15 A Correct.
 16 Q Would you look at the defendants captioned
 17 here. You have sued Standley Trenching, Inc.,
 18 d/b/a, Standley & Company, and J. Houle and Fils,
 19 Inc., a Canadian corporation. And I understand from
 20 listening to your testimony today it is because they
 21 supplied the manure handling system, or pieces or
 22 parts of it, or something to do with it.
 23 Correct?
 24 A Yes.
 25 Q I would like to ask you what Scott

1 Standley has had to do with anything in this case
2 that gives you grounds to sue him? If you know.

3 MR. DINIUS: And I'll interpose on the
4 record at this point. I spoke with Mr. Lewis
5 yesterday and indicated Mr. DeGroot's willingness to
6 stipulate for the dismissal of Scott Standley.

7 MR. LEWIS: Okay.

8 Q (BY MR. LEWIS) Is that your
9 understanding, also, Mr. DeGroot?

10 A Yes.

11 Q I want to ask you the same question about
12 Kurt Standley. What has he done individually or
13 personally that leads you to believe you have a
14 claim against him as an individual?

15 MR. DINIUS: And I'll object to that as it
16 calls for a legal conclusion. To the extent that
17 you can answer it, you can answer the question.

18 THE WITNESS: It's because he's the owner
19 of Standley & Company.

20 Q (BY MR. LEWIS) Any other reason you can
21 think of other than him being an owner of the
22 company?

23 MR. DINIUS: Same objection. You can
24 answer.

25 THE WITNESS: No.

1 Q How would it be possible that it is part
2 of this lawsuit? Can you just fill me in on that?

3 A Well, the sizing of the pipes.

4 Q When I think of trenching I think of
5 digging holes. I'm not thinking about sizing of
6 pipes. Are they the same thing in your mind?

7 A Well, you can't dig a little trench and
8 put a big pipe in it. If you dig a trench
9 three-foot wide you can put a two-foot pipe in, just
10 for example.

11 Q Okay. And what happened on your premises
12 that you believe may have been related to the
13 trenching? By "you" I mean the dairy.

14 A If the sizing of the pipe was not the
15 proper size. That is the only thing.

16 Q And I don't want to belabor this very
17 long. If I understand your example, if they dug a
18 trench that was too narrow to put a proper size pipe
19 in it, then the trenching company could be liable?
20 Is that what you're trying to tell me? Do you see
21 where my - I'm kind of confused, I guess.

22 It is as though you are telling me that
23 the size of the trench dictated the size of the pipe
24 that went into it. And in my experience in
25 contracting situations the trench is dictated by the

1 Q (BY MR. LEWIS) I apologize if I repeat
2 some of the questions Mr. McCurdy has asked. And I
3 may cover some of the same ground he did. And I'm
4 not going to cover a lot of it.

5 But did you or did the dairy have any
6 contract at all with Kurt Standley individually?

7 A I contracted with Beltman to build the
8 dairy and he subcontracted.

9 Q Understood. So that means no.
10 Correct?

11 A No.

12 Q So you did not have any contract with Kurt
13 Standley?

14 A Correct.

15 Q Did you have any contract whatsoever with
16 Standley Trenching, Inc., d/b/a/ Standley & Company?
17 And by you I mean the dairy. DeGroot Dairy, LLC.

18 A Only as far as the trenching that was - I
19 don't know if that was part of the installation of
20 the manure equipment. I do not know. But it was
21 included.

22 Q Is that part of this lawsuit if you did
23 have that contract for trenching?

24 A If it is part of putting the pipes down,
25 it's possible.

1 size of the pipe that is put into it. Those are a
2 little bit opposite than one another.

3 Am I to understand you to say that if
4 DeGroot built a trench that was too narrow, and put
5 a pipe in too small, then, therefore, they are
6 liable for some of your damages?

7 MR. DINIUS: Object to the form. It
8 mischaracterizes or at least misstates the parties.

9 MR. LEWIS: Did I say DeGroot?

10 MR. DINIUS: You did.

11 Q (BY MR. LEWIS) My understanding of what
12 you are saying is that if Standley built a trench
13 that was too narrow, then that dictated the size of
14 the pipe. And if the pipe was too small, and that
15 caused you damages, therefore the trench was
16 improperly sized and caused you losses.

17 Do you follow me?

18 A Standley Trenching is not part of Standley
19 & Company?

20 Q The way this is captioned it says Standley
21 Trenching, Inc., d/b/a Standley & Company. And I
22 think that Standley Trenching, Inc. therefore was
23 Standley & Company. One and the same. As I
24 understand it.

25 A Well, then, they are the same company;

1 correct?
 2 Q Correct.
 3 A Yeah.
 4 Q We got into this area of questioning
 5 because I was asking whether or not you had any --
 6 whether the dairy had any contract with Standley
 7 Trenching, Inc., d/b/a Standley & Company.
 8 Was there a contract between the dairy and
 9 Standley Trenching, Inc., d/b/a Standley & Company?
 10 A I have to refer that to the general
 11 contractor.
 12 Q Because Beltman may have had a contract
 13 with this company. Is that why you are referring it
 14 to them?
 15 A Yes.
 16 Q And I'm not asking you whether Beltman had
 17 a contract with them. And I'm sorry if I confused
 18 you. I may be talking too fast. I know you have
 19 gotten used to Mr. McCurdy and he is a lot more
 20 deliberate and thoughtful than I am. But let me ask
 21 it again.
 22 Did your dairy have any contractual
 23 relationship whatsoever with Standley Trenching,
 24 Inc., d/b/a Standley & Company?
 25 A No.

1 the fibers in there to see if it is going to
 2 separate it out and work. Correct?
 3 A Yes.
 4 Q Do you know whether or not there was a
 5 startup of the flush system before the herd was
 6 moved into the dairy stalls?
 7 A I would have to refer that to Ernest.
 8 Q You weren't present to see the flush
 9 system working before you moved the herd on?
 10 Is that correct?
 11 A There were so many things going on. A lot
 12 of times you take for granted that you think it is
 13 working. I'm sure there were some dry runs to see
 14 that the water did come down. It is one thing to
 15 run it with manure in the alleys or with nothing in
 16 it. With nothing in it, it will just flush. But to
 17 be purely operational you have to have product in
 18 there.
 19 Q I understand that. And I'm trying to
 20 separate those two distinctions out that you just
 21 made. And my question is solely related to an
 22 initial startup of the pumping system to see if the
 23 water flushed through the freestalls in the way that
 24 you expected it to.
 25 Did you observe anything like that before

1 Q Did you have any involvement in
 2 supervising the work that was done for the dairy
 3 construction project?
 4 A No.
 5 Q That was Beltman?
 6 A Yes.
 7 Q Did you have anything to do with the
 8 acceptance of the completion of work by Standley
 9 Trenching, Inc., d/b/a Standley & Company?
 10 A Could you rephrase that, please?
 11 Q Let me take a different approach to this.
 12 I understand that in April 2000 you started your
 13 dairy up.
 14 A Yes.
 15 Q At the time the dairy was started up was
 16 the manure handling system in operation?
 17 A Briefly.
 18 Q Was it operating?
 19 A It did operate.
 20 Q And do you know whether or not there was a
 21 startup of that manure handling system before you
 22 moved the herd in to use the dairy premises?
 23 A The system was such that you cannot run it
 24 without the product in it, which is manure water.
 25 Q So you need to have the manure water and

1 you moved your herd in?
 2 A I did not observe it very well. It may
 3 have happened, but I did not observe it.
 4 Q Were you present when any exercise like
 5 that was undertaken?
 6 A It is a three-ring circus when you are
 7 getting cows in. And that is one of the last things
 8 you look at. But it is a very necessary thing to
 9 work if your dairy is to continue.
 10 Q Did the State of Idaho require that that
 11 flush system be run before you could put the herd in
 12 there?
 13 A I do not know.
 14 Q Did you require that the flush system be
 15 run before you put the herd in there? Even though
 16 there wasn't manure there yet.
 17 A That is something the contractor can
 18 probably answer better than I can. Because it was
 19 his project.
 20 Q And I'll get a chance to ask him that
 21 question. But I want to ask you as the owner
 22 whether you --
 23 A I did not observe it, no.
 24 Q And you didn't demand that it be done
 25 before you moved your own herd in there?

1 A No.

2 Q After your herd was moved into the

3 premises in April of 2000 did you observe the manure

4 handling system operating in a successful manner?

5 A Initially, yes.

6 Q And for how long did it operate initially?

7 Before there was problems.

8 A Ernest can answer this.

9 Q Did the dairy startup happen April 20,

10 2000?

11 A That is the first day we produced milk,

12 yes.

13 Q Were you there on the premises during that

14 period?

15 A Yes.

16 Q Were you living there?

17 A No.

18 Q Where were you living?

19 A I was living in Sunnyside -- or Outlook,

20 Washington.

21 Q Do you know how long a period of time you

22 stayed in the area when the herd was first moved in

23 and the milk began?

24 A I stayed for most of the week.

25 Q Most of one week?

1 A Yeah.

2 Q Did the manure handling system work that

3 entire period that you were present?

4 A I know it worked a little bit.

5 Q By "a little bit," what do you mean?

6 A Well, when it separated manure it did a

7 good job.

8 Q Very good. And that is kind of what I'm

9 asking you. Did it work the way you had anticipated

10 it would work for the period of time you were at the

11 dairy in April of 2000?

12 A From the initial startup it did work.

13 Q And then you left town and you don't know

14 when the problems first started, do you? That is

15 why you're referring me to Ernest?

16 A Like I say, Ernest was there the whole

17 time. And I will let him make his statements. I

18 can't put words in his mouth.

19 Q And I'm not looking for that from you.

20 Don't get me wrong. All I can ask you is what you

21 know. And that is why I'm trying to focus these

22 questions on you. And by "you" I mean you

23 personally. Chuck DeGroot. And I want to capsulize

24 what I think you just told me. You tell me if I'm

25 right or wrong. Is it correct that on April 20,

1 2000 when you began milking, and for part of a week,

2 or the better part of a week while you were still in

3 Idaho, the manure handling system operated the way

4 you expected it to operate?

5 A I have to refer that question to Ernest.

6 Because he and the hired man were back there when it

7 didn't operate. So he can give you specific. I can

8 give you general.

9 Q What can you tell me generally in answer

10 to that question?

11 A It worked briefly.

12 Q And --

13 A The way it was set up it worked briefly.

14 And then we were always repairing it.

15 Q Do you understand my question is limited

16 to a pretty small time frame? The short period of

17 time in April of 2000 when you were on the premises

18 is all I'm referring to. All right?

19 A Okay.

20 Q And I'm not trying to trick you. Maybe

21 I'm talking too fast. Am I?

22 A You're asking me questions that I cannot

23 answer. Because Ernest was the manager. He was the

24 one that had to deal with the situations as they

25 presented themselves.

1 Q Are you telling me then that you don't

2 know if the manure handling system operated the way

3 you expected it to operate during the period of time

4 you were here in April during the startup?

5 A Like I say, I remember it did operate,

6 because there was a big pile of manure. But there

7 were times when the manure didn't pile in the right

8 place.

9 Q Okay. And that was based on your own

10 personal observation?

11 A Yes.

12 Q But you don't have a specific recollection

13 of when that was or what caused that? Only general?

14 MR. DINIUS: Object to the form.

15 Q (BY MR. LEWIS) Can you answer that

16 question?

17 A I remember the manure piling up between

18 the slope screens and the roller presses on the

19 conveyor belt. And it was a mess.

20 Q And when did that occur?

21 A That happened in the first week and weeks

22 after that.

23 Q Weeks?

24 A Yeah.

25 Q Did it happen within the first week after

1 Exhibit 5. It is a letter dated July 25, 2000.
 2 Is that before you now?
 3 A Yes.
 4 Q Would you take a minute and look at it for
 5 me?
 6 A (Complying.)
 7 Q Have you had a chance to read it?
 8 A Yes.
 9 Q Do you recall receiving a copy of this
 10 letter from Mr. Standley?
 11 A My memory has been refreshed, Yes.
 12 Q Do you recall refusing final payment for
 13 the work that Standley did in supplying the manure
 14 handling system?
 15 A Yes.
 16 Q After you received this letter of July 25,
 17 2000, did you approve final payment to be made to
 18 Mr. Standley for the work that he did?
 19 A No.
 20 Q I'm sorry?
 21 A No.
 22 Q Are you certain of that?
 23 A What do you mean?
 24 Q Was Mr. Standley ever paid the final
 25 payment due on his bid after July 25, 2000 pursuant

1 to your directions?
 2 A That can be answered by the contractor.
 3 Q You don't recall?
 4 A I do not recall.
 5 Q In the third paragraph of this letter it
 6 talks about the manure system being designed for
 7 compost bedding. And as of July 25, 2000 it says
 8 that you have yet to use compost as a bedding
 9 source.
 10 Do you believe that that is accurate?
 11 A I started using compost.
 12 Q The question is, had you started using it
 13 by July 25, 2000? Or did you start after that?
 14 A I started after that.
 15 Q Did you start using compost after July 25,
 16 2000 because of this letter? Or because some of
 17 other reason?
 18 A Just because I was able to purchase it and
 19 have it delivered in.
 20 Q What prevented you from purchasing compost
 21 before July of 2000?
 22 A I would have to go back and look at my
 23 invoices on my payments and I can tell you exactly
 24 when I did start purchasing the compost.
 25 Q Was there anything that prevented you from

1 purchasing compost before April 20, 2000 when the
 2 dairy was started up?
 3 A No.
 4 Q Did you ever tell Kurt Standley, or anyone
 5 from Standley Construction, or anyone from Houlihan
 6 Equipment, before April 20, 2000, you were not going
 7 to use compost as bedding material?
 8 A That I was not going to use it?
 9 Q Right.
 10 A Like I said before, sand was my initial
 11 startup. And then compost was used.
 12 Q I appreciate that. That wasn't a very
 13 good question. Let me ask it a different way.
 14 Did you ever tell Kurt Standley, or anyone
 15 with Standley Construction Company, or Standley &
 16 Company, that you were going to use sand instead of
 17 compost as bedding material?
 18 A You mean each month after that?
 19 Q When you first did it. When you first
 20 used sand. Did you ever tell him you were going to
 21 do it before you did it?
 22 A That was, I think, a lack of communication
 23 between the contractors as they were working on it.
 24 Q And it may be you didn't understand my
 25 question. Did Chuck DeGroot ever tell Kurt Standley

1 or anyone with Standley & Company that Chuck DeGroot
 2 was going to use sand as a bedding in his freestalls
 3 before you did it?
 4 A No.
 5 Q Going to the third paragraph on Exhibit 5.
 6 This talks about the level of the lagoon and the
 7 flush water volume.
 8 Do you see that?
 9 A Yes.
 10 Q Can you just tell me what he is talking
 11 about when he says, "You also refuse to bring the
 12 level of your lagoon to the height it was designed
 13 for proper flush water volume?"
 14 A The reason I could not bring my lagoon
 15 level up is because that will fluctuate through the
 16 year. Because in the spring you pump it down. And
 17 in the fall you pump it down. So if you are going
 18 to maintain a high level, and you have constant
 19 inflow of water, you are going to run out. So I had
 20 to maintain a certain level in order to maintain the
 21 amount of water I accumulated in my lagoon.
 22 Q Why was the level of the lagoon important?
 23 A The level?
 24 Q Let me rephrase that. In July of 2000
 25 what was your understanding with regard to how the

EXHIBIT C

DeGroot v. Standley
Affidavit of Mike Kelly

EXHIBIT C

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CHARLES DeGROOT, and DeGROOT)
FARMS, LLC,)
Plaintiffs,)

COPY

vs.)

Case No. CV 2001-777

KURT STANDLEY, STANDLEY)

DEPOSITION OF:

TRENCHING, INC., d/b/a)

ERNEST DeGROOT

STANDLEY & CO., and J. HOULE)

November 12, 2003

& FILS, INC., a Canadian)

corporation,)

Defendant.)

STANDLEY TRENCHING, INC.,)

d/b/a STANDLEY & CO.,)

Counterclaimant,)

vs.)

CHARLES DeGROOT, and DeGROOT)

FARMS, LLC,)

Counterdefendants.)

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR, Notary Public

M & M Court Reporting Service, Inc.
Since 1970

SOUTHERN
1-800-234-9611

NOTARY

■ BOISE, ID
208-345-9611

■ POCATELLO, ID
208-232-5555

■ TWIN FALLS, ID
208-734-1700

1 pursued my MBA.
 2 Q. Would you have stayed in the AG field?
 3 A. That is -- I don't know.
 4 Q. So after the decision was made, the land was
 5 bought in Idaho, what was the target start-up date for
 6 the dairy here?
 7 A. I'm not exactly sure. I know there was a
 8 bunch of stuff going on about then, but I'm not sure.
 9 Q. What type of stuff was going on that made that
 10 date unsure?
 11 MS. FISCHER: Object as to the form.
 12 Go ahead, if you know.
 13 THE WITNESS: What was the question again?
 14 Q. BY MS. DOUGHERTY: You referred to a bunch of
 15 stuff going on that didn't allow you to figure out what
 16 that target date was. I just want to know what kind of
 17 stuff are you talking about.
 18 A. Just had to do with -- we were planning on --
 19 I think we were planning on being there at a certain
 20 date, but because of getting things going over here, it
 21 delayed all that. I don't know. We had to be off our
 22 other place at a certain time, but -- that is foggy.
 23 Sorry.
 24 Q. Okay. That's fair.
 25 You graduated in May of 1999; is that correct?

1 A. Yes.
 2 Q. So was there a time period that you worked on
 3 the Sunnyside, Washington, dairy before the Idaho dairy
 4 got started after you graduated?
 5 A. Yeah.
 6 Q. And that would have been from May of 1999
 7 until when?
 8 A. April of 2000.
 9 Q. Do you know when the construction began on the
 10 Idaho dairy?
 11 A. I'm not exactly sure.
 12 Q. Do you have any idea, like, even a month?
 13 A. I believe it was in the summer of '99 they
 14 started moving dirt.
 15 Q. Had you made any visits to the Idaho land
 16 prior to the move?
 17 A. Yes.
 18 Q. Give me an idea of how many times.
 19 A. Probably three or four times.
 20 Q. When would those have been?
 21 A. Various times.
 22 Q. After you graduated from college, though;
 23 between May of '99 and April of 2000?
 24 A. Yeah.
 25 Q. What was the purpose of your visits down to

1 the Idaho land?
 2 A. Check on progress, seeing how things were
 3 going, just going with my dad because he was going down
 4 there.
 5 Q. Did you have any responsibilities between May
 6 of 1999 and April of 2000 that related to the Idaho
 7 dairy?
 8 A. No.
 9 Q. What was the planned capacity for the Idaho
 10 dairy?
 11 A. 2500 cows, milking and dry.
 12 Q. Did you have any input on establishing that
 13 capacity?
 14 A. It wasn't my decision.
 15 Q. Whose decision was that?
 16 A. My dad's and the bank.
 17 Q. What was the plan for the setup of the Idaho
 18 dairy?
 19 MS. FISCHER: Object as to vague.
 20 If you understand what she's getting at, you
 21 can answer the question.
 22 Q. BY MS. DOUGHERTY: Do you want more
 23 clarification?
 24 A. Please.
 25 Q. Compared to the Washington dairy and the way

1 that that physical setup is, whether it's free style or
 2 open lots, what was the plan for the Idaho dairy?
 3 A. Free stall.
 4 Q. How was that different from the Washington
 5 dairy?
 6 A. Basically to provide covering for the cows
 7 underneath -- basically, you give the cows a chance for
 8 shelter year-round.
 9 Q. So the Washington was all open?
 10 A. It was all open lot.
 11 Q. Did you have some input in deciding that the
 12 Idaho dairy should be free style instead of open?
 13 A. I was asked my opinion, but it wasn't my
 14 decision.
 15 Q. Okay. Again, would you have been asked by
 16 your father?
 17 A. Yes.
 18 Q. Did you think that going to the free style was
 19 a better approach for the Idaho dairy?
 20 A. Yes.
 21 Q. Why?
 22 A. Cow comfort.
 23 Q. Were you involved in talking to any of the
 24 potential contractors or vendors related to the
 25 construction of the Idaho dairy?

- 1 except feed the dry cows once a day.
- 2 Q. Was your dad on location at that time? By
- 3 "location," I mean on the Idaho dairy?
- 4 A. I'm not real sure, but I believe so.
- 5 Q. Were any of your employees or the employees of
- 6 DeGroot Dairy on site in Idaho during those three to
- 7 four days?
- 8 A. No.
- 9 Q. So as far as either owners or workers of
- 10 DeGroot Dairy, just you and your father were on site
- 11 prior to the cows arriving?
- 12 A. Yes.
- 13 Q. Was there all new equipment installed on the
- 14 Idaho dairy?
- 15 A. Yes.
- 16 Q. Who provided training on the new equipment?
- 17 A. Which new equipment?
- 18 Q. On any of the new equipment.
- 19 A. Well, we had a lot of different vendors.
- 20 Q. Okay. Let's go through who those vendors were
- 21 and whether or not training was provided to you. Okay?
- 22 A. Okay.
- 23 Q. Go ahead, if you want to just start with who
- 24 the vendors were.
- 25 A. There was the parlor equipment, which was the

- 1 milking machines and whatnot. As far as training, there
- 2 was really nothing that needed to be trained there. The
- 3 only training that needed to be done was as far as
- 4 milking and milking procedures.
- 5 Q. Did you receive training in that or is that
- 6 something that you decided yourself?
- 7 A. I established that once I determined who I was
- 8 going to hire. That is one thing I think I was doing in
- 9 those days.
- 10 Q. What was that?
- 11 A. Hiring employees, milkers.
- 12 Q. What other equipment was new that you had to
- 13 be trained on?
- 14 A. Our loader, our CAT loader.
- 15 Q. Who trained you on that?
- 16 A. That was Western States.
- 17 Q. What about on the manure handling system; was
- 18 that all new equipment?
- 19 A. Yes.
- 20 Q. Earlier you said that in those last three or
- 21 four days the manure system was not ready, that it still
- 22 needed to be -- there were power issues and they were
- 23 still hooking up some of the pipes at one point in time.
- 24 Was the manure handling system operational?
- 25 A. I believe they had it running a day or two

- 1 after we had started milking.
- 2 Q. What did you do during the day or two that you
- 3 were milking and it was not operational?
- 4 A. Nothing.
- 5 Q. You didn't do any kind of manual cleaning or
- 6 anything like that?
- 7 A. No. There were only 300 cows on the place.
- 8 Q. Okay. So a day or two after you started
- 9 milking would have been what date?
- 10 A. It was about the 21st or 22nd, maybe.
- 11 Q. Of April 2000?
- 12 A. I think so.
- 13 Q. Once the manure handling system was
- 14 operational, did you participate in any dry run or
- 15 training run of the system?
- 16 MS. FISCHER: Object as to form.
- 17 THE WITNESS: Did I -- sorry. Restate that.
- 18 Q. BY MS. DOUGHERTY: Did you participate in any
- 19 kind of a dry run of the manure handling system?
- 20 MS. FISCHER: Same objection.
- 21 THE WITNESS: No.
- 22 Q. BY MS. DOUGHERTY: Did you participate in any
- 23 kind of training session on the manure handling system?
- 24 A. No.
- 25 Q. Was a training session provided on the manure

- 1 handling system?
- 2 A. No.
- 3 Q. How did you learn how to run it?
- 4 MS. FISCHER: Object as to form.
- 5 THE WITNESS: How did I learn how to run it?
- 6 Q. BY MS. DOUGHERTY: Run the manure handling
- 7 system.
- 8 A. I didn't have to run it. It was set up with
- 9 the intention it was supposed to be all automated.
- 10 Q. Did it have to be turned on?
- 11 A. It was all turned on.
- 12 Q. On what date was it turned on?
- 13 A. I believe it was the 21st, 22nd, somewhere
- 14 around there.
- 15 Q. So who informed you that the manure handling
- 16 system was operational?
- 17 A. Jeff Griggs.
- 18 Q. Jeff Griggs.
- 19 When he informed you that it was, did you ask
- 20 for any training on the system?
- 21 A. I asked him what needed to be done or is it
- 22 something that pretty much takes care of itself. He
- 23 said, "You won't have to worry about it."
- 24 I said, "Okay."
- 25 Q. Were either Stan or Tom Beltman on site when

1 to clean out the manure that there. Got to the end,
 2 hit the drains, and eventually through pipes,
 3 underground pipes, the water went down to this
 4 collection pit.
 5 Q. Will you label that for us too?
 6 A. It's already labeled. It says "Pit."
 7 Q. Okay.
 8 A. And from that pit it was pumped up over the
 9 slope screens that were facing each other.
 10 Q. Sort of in a "V" then, the slope screens?
 11 A. Yeah. Then the material that came off the
 12 slope screens -- it was supposed to take some of the
 13 water out through those perforations in the screen, and
 14 then the rest of the water was to be pressed out via the
 15 rollers underneath the hoppers. And the dry material
 16 that came out of the rollers was deposited on a conveyor
 17 belt in between the two, which then there was a short
 18 conveyor belt which ran into a hopper which fed a large
 19 stacker, and that dropped it out in the middle of this
 20 compost stack area, and from there we handled it however
 21 we needed to.
 22 Q. Now, where are the conveyor belts located on
 23 that diagram? Where would they be located?
 24 A. They would have been at the end of here, I
 25 guess.

1 out, then you would see that pretty obviously.
 2 Q. So as they stacked up, rather than being
 3 conveyed on the conveyor belt, you were able to see from
 4 the milk barn what that problem was; is that right?
 5 A. Yeah.
 6 Q. How did you arrive at your understanding of
 7 how the manure handling system was supposed to work?
 8 A. Everything involved or the mechanical
 9 processes that were happening down here?
 10 Q. First, everything. How did you arrive at your
 11 understanding of how this whole process of manure
 12 handling was supposed to work?
 13 A. Well, we had a flush system in Washington.
 14 Q. Who provided the construction of the flush
 15 system in Washington; do you know?
 16 A. I can't remember the guy's name.
 17 Q. Was the flush system on the Idaho dairy the
 18 same as the flush system on the Washington dairy?
 19 A. Yes, basically.
 20 Q. Do you know what the differences were, if any?
 21 A. In Washington we pumped out of our lagoon into
 22 storage tanks, and those storage tanks held the water
 23 until they were full, and then we manually flushed each
 24 alley individually.
 25 This one was set up to run automatically and

1 Q. What is labeled as the "Pit"?
 2 A. Roller or screens, I guess this whole
 3 rectangle.
 4 Q. Okay. So approximately how far is that area,
 5 that pit area where the roller and screens and the
 6 conveyor belt is from the barn?
 7 A. How far is it from the barn?
 8 Q. Yes.
 9 MS. FISCHER: I'll object to the form.
 10 Q. BY MS. DOUGHERTY: Why don't you show us where
 11 the barn is.
 12 A. Here's the barn.
 13 MS. FISCHER: The milking barn?
 14 MR. DOUGHERTY: Yes, the milking barn.
 15 THE WITNESS: That is right here, and that
 16 area is directly behind it about 500 feet.
 17 Q. BY MS. DOUGHERTY: Can you see that area from
 18 the milking barn?
 19 A. Yes.
 20 Q. Could you see the stacker getting backed up
 21 from the milking barn?
 22 A. Not until it was too late already.
 23 Q. Tell me more about what you mean by that.
 24 A. I could not see it initially happen, but once
 25 there was a big bloody mess back there, I got the shovel

1 pump directly from the pump to the flush heads at the
 2 top of each alley.
 3 Q. Were you involved in any of the decisions to
 4 create or design this flush system for the Idaho dairy?
 5 A. No.
 6 Q. Who was involved with that?
 7 A. I'm not sure.
 8 Q. Was your dad the ultimate decision maker on
 9 how things like the manure handling system on the Idaho
 10 dairy would be designed or constructed?
 11 MS. FISCHER: Object as to the form. I don't
 12 think we established his dad designed these flush
 13 systems.
 14 Q. BY MS. DOUGHERTY: Was your dad the decision
 15 maker about what to purchase as far as the manure
 16 handling system on the Idaho dairy?
 17 A. The only thing he did was decide what company
 18 was going to take care of that end of things.
 19 Q. Who decided to create a flush system that
 20 would work automatically as opposed to the Washington
 21 system that was a manual operation?
 22 A. I don't know.
 23 Q. Did you have any input on any of the design or
 24 the idea of the manure handling system on the Idaho
 25 dairy?

1 A. The only thing I -- I know -- thing I did
2 have input on was I said, "Hey, my friend said this
3 works pretty good. Let's go check it out." But it was
4 a total different mechanical process.

5 Q. When you say "this," what are you referring
6 to?

7 A. It was a called a screw press.

8 Q. Did you look into the -- what did you say,
9 screw press?

10 A. Screw press.

11 Q. Did you look into the screw press for the
12 Idaho dairy?

13 A. Yeah, a little bit.

14 Q. Did you decide against the screw press for the
15 Idaho dairy?

16 A. Obviously, yes.

17 Q. Did your dad take a look at the screw press,
18 as well?

19 A. Yeah.

20 Q. Do you recall who the company was that would
21 install a screw press?

22 A. No. We just went to another dairyman that
23 lived by us in Washington, got his opinion. That is
24 about it.

25 Q. Had you ever seen any other systems that were

1 3,000 cows plus. And then there was smaller places that
2 had the same system as well.

3 Q. Okay. So the automated flush system is a
4 system that works both for smaller and larger dairy
5 operations; is that correct?

6 A. Yeah.

7 Q. Again, I want to be clear. I want your
8 opinion about how the manure handling system was
9 supposed to work here; okay? I'm going to get to how it
10 did work, but I want you to --

11 A. How it was supposed to work.

12 Q. How it was supposed to work. With that in
13 mind, will you describe how the conveyor belt system
14 part of the manure handling system was supposed to work?

15 A. It was, basically, supposed to take the dried
16 pressed material that came off the separators and carry
17 it away and stack it until we hauled it off.

18 Q. Okay. When you say "carry it away and stack
19 it," how would a conveyor belt accomplish the stacking?

20 A. It was at an angle, so it could stack it 20
21 some feet up in the air.

22 Q. When you say until you hauled it away, did you
23 understand that the manure handling system should have
24 been able to stack a certain number or for a certain
25 period of time? How do you talk about the stacking

1 the same as the manure handling system installed on the
2 DeGroot Dairy?

3 MS. FISCHER: Excuse me. You mean automated
4 flush system, not exactly the same system?

5 Q. BY MS. DOUGHERTY: Yes. The automated flush
6 system as opposed to the flush system that you had on
7 the Washington dairy.

8 A. Yeah.

9 Q. You had seen that type of system somewhere
10 else?

11 A. It's pretty -- it's very common.

12 Q. It's common?

13 A. You can walk on to pretty much any dairy, any
14 new dairy, that is what they have going on.

15 Q. The dairies that you've seen the automated
16 flush system on, do you have any idea how many cows
17 those dairies have?

18 MS. FISCHER: Object as to form.

19 Q. BY MS. DOUGHERTY: Do you have any idea how
20 many milking cows those dairies are working?

21 A. Yeah.

22 Q. About how many?

23 A. Well, a lot of places I went to were down in
24 central California, and they were anywhere between 2-
25 and 3,000 cows. Our neighbor's place in Washington was

1 capacity?

2 A. It was planned that we would have enough
3 capacity there to stockpile material for about a week.

4 Q. Would that be without somebody having to go
5 and move any of the stack away?

6 A. Right.

7 Q. Was that based on the number of cows that you
8 would be milking?

9 A. I hope so.

10 Q. Do you recall where you got the understanding
11 that you would be able to allow the system to stack for
12 about a week before having to move any of it?

13 A. That is how it was set up because they set it
14 up with a hopper on it, and that whole large stacker was
15 built with wheels on the bottom so you could start on
16 one end, until it got to the top, and then move it as
17 need be, as the pile grew, until this whole area -- you
18 ran out of room. You could swing it and start stacking
19 on one end and continue to stack it until this whole
20 area was full.

21 Q. When you say "move it," is that something that
22 the machine would do itself or would that require
23 somebody going and physically moving those wheels?

24 A. You would have to go back there and move it.

25 Q. Based on your understanding of how the system

1 Standley to modify and renovate the manure handling
2 equipment that Standley had installed and some of which
3 was manufactured by Houle."

4 Can you tell me what modifications and
5 renovations were requested of Standley to make on that
6 manure handling system?

7 MS. FISCHER: Object as to form.

8 Go ahead.

9 THE WITNESS: I know we needed to get more
10 water down our alleys; that was one thing. And we also
11 asked to put some type of automatic -- I think it was
12 some automatic shut-off device on the separators so that
13 at least we would stop the bleeding -- I mean, so that
14 it would shut the equipment down before it became a
15 major problem.

16 Q. BY MS. DOUGHERTY: Have you actually seen the
17 contracts that are referred to in this allegation?

18 A. No.

19 Q. Are you aware of any written contract between
20 Standley and DeGroot Dairy that relates to the water
21 down the alleys and the auto shut off on the separator?

22 A. No.

23 Q. In that same complaint it states that: "The
24 plaintiffs contacted Standley on June 18th and notified
25 them that they were revoking acceptance of the manure

1 raising a red flag about once a year.

2 Q. How often was the State Department of Ag been
3 out to the DeGroot Dairy over the last year?

4 MS. FISCHER: I'm sorry. For clarification,
5 just in connection with routine inspections?

6 MR. DOUGHERTY: Yes.

7 THE WITNESS: With routine inspections I
8 think -- I know the last time he was out there was in
9 August.

10 Q. BY MS. DOUGHERTY: Do you know how many times
11 prior to August in the year 2003 that the Department of
12 Ag conducted a routine inspection on the dairy?

13 A. Couple times. I don't know. A couple times.

14 Q. Have there been other inspections conducted by
15 the State Department of Ag other than the routine
16 inspections on the dairy?

17 A. They have to come by every six months and take
18 a water sample. And then they've been out there to --
19 if somebody makes a complaint.

20 Q. Have there been any complaints made related to
21 the DeGroot Dairy since it began operations?

22 A. Not specifically to our dairy.

23 Q. Has the State Department of Ag come out to the
24 dairy related to a complaint?

25 A. Yes.

1 handling equipment and demanding a return of the
2 purchase money."

3 Were you involved in that contract to Standley
4 and notification of nonacceptance of the manure handling
5 system?

6 A. No.

7 Q. Do you recall if as of June 18, 2001, you had
8 removed all of the manure handling equipment from
9 operational use? So it would have been summer of 2001.

10 A. I'm trying to think back.

11 MS. FISCHER: Just answer if you know.

12 THE WITNESS: I can't remember.

13 Q. BY MS. DOUGHERTY: Are there regular
14 inspections conducted on the dairy by any government
15 agencies?

16 A. Yes.

17 Q. By whom?

18 A. State Department of Agriculture.

19 Q. How often?

20 A. Depends on your status as far as violations or
21 what your most recent score was. I don't know exactly
22 how it works, but I know if your milk quality isn't real
23 good and you keep getting high counts, they come out
24 more frequently, like every three months. But if you
25 are in good standing with all that stuff and you are not

1 Q. When was that?

2 A. This past summer.

3 Q. Do you know what the complaint was?

4 A. Like I said, it's not -- one of them was flies
5 and the other one was odor.

6 Q. Did the Department make any recommendations
7 after they came out to the dairy?

8 A. Concerning the flies, he was just going out
9 and doing -- he had to go and stop by every dairy in the
10 area and just say: Hey, somebody complained. I'm just
11 seeing what is going on here. And he had nothing to say
12 here.

13 As far as the odor, most recently, same thing.
14 There was a couple of dairies in the area, so he has to
15 go out to each one of them and see what they are doing.
16 And, basically, sees if there is anything that is
17 blatantly wrong. And he looks back at previous
18 inspection records and compares it to that to see if
19 improvements have been made or not. And the odor
20 complaints --

21 MS. FISHER: The question is: Was there any
22 recommendations made by him?

23 THE WITNESS: No.

24 Q. BY MS. DOUGHERTY: When the Department of Ag
25 guy -- let's give him a name.

1 talk to Jeff Griggs?
 2 A. It was at least once a week when they were out
 3 there repairing.
 4 Q. How about prior to that when the installation
 5 was still going on?
 6 A. I had talked to him once or twice. I didn't
 7 go out there very frequently. My dad was always -- I
 8 stayed at home in Washington for the most part.
 9 Q. When you were having conversations with, I
 10 believe you testified it was Jeff Griggs about how the
 11 system worked, and when he was showing you how to
 12 program the clocks, did you have any kind of discussion
 13 with Jeff Griggs or did you ask him any questions about
 14 how often the alleys should be flushed?
 15 A. No. That stuff was all set up. He just
 16 showed me later on how to turn on different alleys when
 17 we had those alleys ready.
 18 Q. Peg asked you some question about the initial
 19 bedding, which was sand and gravel, and you indicated
 20 that it was supposed to be sand. Do you know why at
 21 that time sand was considered to be the appropriate
 22 initial bedding?
 23 A. No.
 24 Q. When you were talking to Peg about routine
 25 inspections by the State Department of Ag, you indicated

1 that high counts is something that would cause an
 2 inspector to have to come back more frequently; is that
 3 correct?
 4 A. Yes.
 5 Q. What does that mean, "high counts"?
 6 A. The state randomly pulls samples from your
 7 milk, and they do bacteria counts on that, and they
 8 check -- they have certain thresholds for what is
 9 allowable. And if you have certain levels, then that
 10 kind of raises a red flag, and a lot of times it has to
 11 do with some chemical applications, washing, pipelines.
 12 Q. Do you know who prepared the design plans for
 13 the system that was installed, the manure handling
 14 system that was installed?
 15 A. No.
 16 Q. Have you ever had any conversations with any
 17 representatives of Houle?
 18 A. No.
 19 Q. Have you ever exchanged any written
 20 correspondence with Houle?
 21 A. No.
 22 Q. Do you know who Bill Shelton is?
 23 A. Yes.
 24 Q. Who is he?
 25 A. I believe he's a former Department of Ag

1 inspector.
 2 Q. Did he ever inspect the Idaho dairy?
 3 A. I think so. -I'm not sure.
 4 Q. In addition to the routine inspections that
 5 you talked to Peg about, was there any kind of initial
 6 start up inspection that needed to occur?
 7 A. Yes.
 8 Q. Is that the inspection that Bill Shelton did
 9 or did someone else do that?
 10 A. I think it was the one Bill Shelton did.
 11 Q. Do you recall what was involved in that
 12 inspection?
 13 A. No.
 14 Q. Were you present for that inspection?
 15 A. I believe I was, and I don't remember talking
 16 to them about that inspection.
 17 Q. Do you recall when that inspection occurred?
 18 A. Before we started milking cows.
 19 Q. Was it after you had arrived, had moved to
 20 Idaho permanently?
 21 A. Yes.
 22 Q. So it was probably within that week time
 23 frame?
 24 A. It was prior to us being allowed to ship milk.
 25 Q. But you had dry cows on the property; is that

1 correct?
 2 A. Yes.
 3 Q. Do you recall when the original construction
 4 of the Idaho property started?
 5 A. I think she asked that, too, but I think it
 6 was somewhere -- I think they started moving dirt in May
 7 or June of 2000 -- or, no, no, I'm sorry -- May or June
 8 of '99.
 9 Q. I know she probably asked you this question,
 10 and I was writing something else down, I think.
 11 How often did you come to Idaho to see the
 12 construction site between May of 1999 and the time that
 13 you moved to Idaho in April of 2000?
 14 A. I don't know about frequency, but I think I
 15 was out here maybe four to six times.
 16 Q. Do you recall when you first started having
 17 problems with the manure handling system, the belt
 18 fraying? The belt on the conveyor system fraying?
 19 A. I remember that happening, but I don't
 20 remember if that was right away or later on or what. I
 21 remember it happening at one point.
 22 Q. But you don't recall when?
 23 A. No.
 24 Q. Do you recall the belt ever breaking?
 25 A. Yes.

EXHIBIT D

DeGroot v. Standley
Affidavit of Mike Kelly

EXHIBIT D

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON

COPY

CHARLES DeGROOT and DeGROOT)	VOLUME II
DAIRY, LLC.,)	
Plaintiffs,)	
vs.)	Case No.
STANDLEY TRENCHING, INC., d/b/a)	CV 2001-777
STANDLEY & CO.; and J. HOULE &)	
FILS, INC., a Canadian corporation,)	
Defendants.)	
_____)	

(Caption Continued)

CONTINUED DEPOSITION OF CHARLES DeGROOT

January 27, 2004

REPORTED BY:

DIANA L. DURLAND, CSR No. 637

Notary Public



SOUTHERN
1-800-234-9611

NORTHERN
1-800-879-1700

■ BOISE, ID
208-345-9611

■ POCATELLO, ID
208-232-5581

■ COEUR D' ALENE, ID
208-765-1700

■ TWIN FALLS, ID
208-334-1700

■ ONTARIO, OR
503-864-1700

■ SPOKANE, WA
509-485-1700

1 seen a copy of that contract with Beltman?

2 A. I have looked at the contract, yes.

3 Q. And do you have a copy of that contract?

4 A. Somewhere.

5 MR. KELLY: Off the record.

6 (Discussion held off the record.)

7 Q. (BY MR. KELLY) Mr. DeGroot, off the record

8 we had a discussion with regard to what constitutes

9 this contract with Beltman Construction. And it's

10 your understanding that your contract with

11 Mr. Beltman is essentially the bid that Beltman

12 Construction provided to you?

13 A. Yes.

14 Q. And is it also still your testimony at this
15 point in time that you had no contract with Standley?

16 MS. FISCHER: Object to the form of the
17 question. That calls for him to answer a legal
18 question.

19 Q. (BY MR. KELLY) Are you aware of any written
20 contract you had with Standley Trenching in regard to
21 the construction of the dairy in Melba?

22 A. I'm not.

23 Q. Are you aware of any written contract that
24 Beltman Construction had with Standley with regard to
25 the construction of your dairy?

1 A. I don't know.

2 Q. Have you ever had any discussions with
3 either Stan or Tom Beltman as to whether or not they
4 had a contract with Standley?

5 A. I do not know that.

6 Q. You don't know if you had any discussions
7 or --

8 A. Would you rephrase that, please?

9 Q. Have you had any discussions with either Tom
10 or Stan Beltman in regard to whether Beltman
11 Construction had a written contract with Standley?

12 A. I do not recall at this time.

13 Q. Is it your understanding that in regard to
14 the work Standley did at your dairy in Melba, that
15 Standley was a subcontractor to Beltman Construction?

16 A. Yes.

17 Q. Are you aware of any specifications Beltman
18 Construction provided to Standley in regard to the
19 work that they were to perform at your dairy?

20 A. I am not aware of it.

21 Q. What is your understanding of the scope of
22 Beltman Construction's job in regard to the building
23 of your dairy?

24 A. He was the contractor.

1 responsible for the overall construction of the
2 dairy?

3 A. He was responsible for the construction of
4 the dairy, but then he subbed different areas out.

5 Q. Are you aware specifically of what jobs or
6 duties he subbed out in regard to the construction of
7 the dairy?

8 A. There's a number of areas: One was the
9 building of the milk barn, which he subbed out. Also
10 the dairy equipment which was in the milk barn. Also
11 the freestalls. And they did the pole work, the
12 building of the barns and also the manure handling.
13 Also, of course, before the dairy could be started,
14 it had to be graded.

15 Q. Anything else you can think of offhand?

16 A. Electrical.

17 Q. In regard to the milk barn, who did Beltman
18 sub that out to?

19 A. Bruce Cooper or Cooper Construction.

20 Q. Where are they out of?

21 A. Meridian.

22 Q. How about the dairy equipment?

23 A. That was Dairy Services.

24 Q. They're in Canyon County; right?

25 A. They're in Caldwell.

1 Q. How about the freestalls and the pole work?

2 A. That was done by Beltman Welding.

3 Q. It's your understanding that Beltman Welding
4 is a separate entity from Beltman Construction?

5 A. Can you rephrase that? I think you're
6 confusing issues.

7 Q. You indicated that Beltman Welding did the
8 freestall and pole work; correct?

9 A. Yes.

10 Q. It's my understanding that Beltman
11 Construction was the general contractor on the job;
12 right?

13 A. No, Beltman Welding.

14 Q. Is there an entity called Beltman
15 Construction?

16 A. At that time, no.

17 Q. So that's one aspect of the job that the
18 general contractor handled itself, the freestall
19 work?

20 A. Yes.

21 Q. And do you know specifically who with
22 Beltman Welding either supervised or handled the
23 majority of the freestall work?

24 A. It was Tom Beltman.

1 to Standley; correct?

2 A. Yes.

3 Q. How about the grading work?

4 A. That went to Brian Showalter.

5 Q. Does Mr. Showalter have a company?

6 A. Yes, I believe it's in Marsing.

7 Q. Do you know what the company is called?

8 A. Showalter -- no. It's Showalter something.

9 Q. And then the electrical work, who did the
10 sub work on that?

11 A. Town & Country.

12 Q. Now with regard to any of these
13 subcontractors that Beltman Welding retained to do
14 the work on your dairy, did you have any input at all
15 as to whether you wanted those subcontractors
16 utilized?

17 A. We went with the subcontractors that were
18 what we thought were the best available.

19 Q. Did you sit down and discuss the
20 subcontractors with Beltman Welding as to whether you
21 thought they were appropriate for the job they were
22 supposed to be doing?

23 A. Like I said, Beltman Welding, he was the
24 general contractor. And when it came to the
25 subcontractor, you have choices in some and some you

1 A. In the different magazines that are sent to
2 the dairy industry.

3 Q. What type of magazines?

4 A. Like Progressive Dairyman here in Idaho.

5 Q. Did Progressive Dairyman ever advertise any
6 other entities that did manure-handling
7 installations?

8 A. They may have.

9 Q. Are you aware of any others?

10 A. At the time -- I may have been aware of
11 them, but you go usually with the one that you feel
12 is an expert in the area of manure handling.

13 Q. Just so I'm clear, as far as utilizing
14 Standley to do the manure-handling system at your
15 dairy, did you have discussion with Beltman as to
16 whether Standley would be the appropriate party to do
17 that work?

18 A. It was just more or less understood that he
19 would do it.

20 Q. Prior to moving to Idaho, you had a dairy up
21 in Washington State; correct?

22 A. Yes.

23 Q. Did you ever utilize Standley for any work
24 up at your dairy in Washington?

25 A. No.

1 don't.

2 Q. How about with regard to Cooper
3 Construction? Did you have any choice there?

4 A. The choice was made by Beltman Welding.

5 Q. How about utilizing Dairy Services for the
6 dairy equipment? Did you have any input on that?

7 A. That was my decision.

8 Q. How about the decision to retain Standley to
9 do the manure handling system? Did you have any
10 input?

11 A. Most of -- like I said before, there's not a
12 whole lot of manure handling contractors, so we went
13 with what was available.

14 Q. Did Beltman give you any choice other than
15 Standley?

16 A. Well, if you only have one, what choice do
17 you have?

18 Q. That is true. But I'm asking you: Were
19 there any other choices out there that Beltman gave
20 you?

21 A. No.

22 Q. Were you aware of Standley prior to the
23 decision to build your dairy?

24 A. Yes.

25 Q. And how were you aware of Standley?

1 Q. Going back to your family. Your family was
2 in the dairy business back in California, too; is
3 that correct?

4 A. Yes.

5 Q. Did anybody from your family ever utilize
6 Standley in California for any type of work?

7 A. Not that I'm aware of.

8 Q. In arriving at the decision to use Beltman
9 as your general contractor, did you have any
10 discussions with -- strike that.

11 When you discussed utilizing Beltman Welding
12 as your general contractor, did you have a contact
13 person at Beltman that you dealt with?

14 A. Yes.

15 Q. Who was that?

16 A. Stan Beltman.

17 Q. Tom Beltman was the individual with Beltman
18 Construction who was on-site doing, number one, the
19 freestall installation and the pole work and then,
20 number two, it was his job to oversee the
21 subcontractors?

22 A. I don't know what arrangement he had with
23 Stan, but he did oversee the project, yes.

24 Q. Did you ever have any discussions with

1 A. Yes.

2 Q. In conjunction with the size of the piping,
3 were they also responsible for calculating the amount
4 of water to be used in the flush?

5 A. Yes.

6 Q. Did anyone from Standley or Beltman come to
7 you and ask you specifically what size herd you were
8 going to be using in order for them to provide the
9 calculations and sizing of the piping, et cetera,
10 that they were going to be utilizing for the
11 manure-handling system?

12 MS. FISCHER: I'll object to the form. If
13 you understand the question, you can answer it.

14 WITNESS: Repeat it.

15 Q. (BY MR. KELLY) Did anyone, whether from
16 Standley or Beltman, come to you requesting you
17 advise them of the size of the herd for the purposes
18 of Standley calculating out the materials and the
19 size of the piping, et cetera, that they needed for
20 the handling system?

21 A. No.

22 Q. Did anyone from Standley or Beltman come to
23 you to ask you specifically what type of bedding you
24 were going to be using in the dairy for the purposes
25 of setting up the manure-handling system?

1 A. Could you repeat that, please?

2 Q. Did anyone from either Standley or Beltman
3 come to you to specifically request what type of
4 bedding you were utilizing, or planned to utilize in
5 the dairy in order that they could calculate what
6 they needed to provide for the manure-handling
7 system?

8 MS. FISCHER: Object as to the form. You
9 can go ahead and answer it.

10 WITNESS: Not that I recall. Just to add to
11 that, it's a process.

12 Q. (BY MR. KELLY) Okay. So at any point
13 during that process, did anyone from either Beltman
14 or Standley come to you and say, "We need to know
15 what type of bedding you're utilizing in this dairy
16 for the purposes of us setting up the manure-handling
17 system"?

18 A. Not that I recall.

19 Q. At the time in that April 20th, 2000, time
20 frame, you were not in Idaho full-time as yet; were
21 you?

22 A. No.

23 Q. When did you actually move to Idaho?

24 A. September of 2000.

1 frame, do you have an idea how many trips you
2 actually made to the dairy?

3 A. You mean from Washington?

4 Q. Yeah. I'm assuming in April you were still
5 in Washington; is that correct?

6 A. It was at least twice a month.

7 Q. And just to backtrack, the construction of
8 the dairy started sometime in the summer of '99;
9 correct?

10 A. Correct.

11 Q. Between the summer of '99 and April 2000
12 when your dairy started up, how often, if at all,
13 would you travel to Idaho to check on the progress of
14 the construction?

15 A. At least once or twice a month. Ask my
16 wife.

17 Q. What do you want me to ask her?

18 A. How often I was gone.

19 Q. During that summer of '99 to April time
20 frame, other than your trips here to Idaho to check
21 on the construction of the project, who would have
22 been here overseeing the construction project?

23 A. Tom Beltman.

24 Q. When did your son Ernest arrive to either
25 oversee or start working on the dairy?

1 A. Shortly -- right near April 20.

2 Q. So, again, just from the time the
3 construction started until Ernest arrived around
4 April 20th, other than your once or twice visit a
5 month to the dairy, Tom Beltman was overseeing the
6 construction project?

7 A. Yes.

8 Q. Did Mr. Beltman communicate with you, either
9 telephonically or in writing, as to the progress of
10 the job?

11 A. He didn't have to, because I came often
12 enough.

13 Q. Between the summer of '99 and the April 20
14 start update, did you ever see anything that
15 concerned you in regard to the installation or
16 construction of the manure-handling system that
17 caused you any concern?

18 A. Not then, no.

19 Q. Between July or summer of '99 and April
20 20th, 2000, did Mr. Beltman ever express to you his
21 concerns about how the manure-handling system was
22 being constructed?

23 A. He would have to answer that.

24 Q. He didn't express anything to you?

EXHIBIT E

DeGroot v. Standley
Affidavit of Mike Kelly

EXHIBIT E

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

COPY

CHARLES DeGROOT; and DeGROOT)

FARMS, LLC,)

Plaintiffs,)

v.)

KURT STANDLEY, SCOTT STANDLEY)

and STANDLEY TRENCHING, INC.,)

d/b/a STANDLEY & CO.; and J.)

HOULE & FILS, INC., a)

Canadian corporation,)

Defendants.)

Continued...

THE DEPOSITION OF TOM BELTMAN

OCTOBER 23, 2002

REPORTED BY:

MONICA M. ARCHULETA, CSR NO. 471

Notary Public

M & M Court Reporting Service, Inc.

Since 1970

Registered Professional Reporters

SOUTHERN
1-800-234-9611

- BOISE, ID 208-345-9611
- TWIN FALLS, ID 208-734-1700
- POCATELLO, ID 208-232-5581
- ONTARIO, OR 503-881-1700

NORTHERN
1-800-879-1700

- COEUR D'ALENE, ID 208-765-1700
- SPOKANE, WA 509-455-4515

Page 17

1 Q How long did that take?
 2 A Oh, probably two-and-a-half months.
 3 Q What else did you do?
 4 A After that we went to Chuck's.
 5 Q Yesterday – and I'm going to use his
 6 first name just to avoid confusion with Pete
 7 DeGroot. And I don't mean any disrespect,
 8 Mr. DeGroot, by doing that. I just need to clarify
 9 the difference.
 10 When you were working on Chuck's project,
 11 first of all, did you play any role in working with
 12 your brother in establishing the initial agreement
 13 that Beltman Construction had with Mr. Chuck DeGroot
 14 for that project?
 15 A You mean the bid process?
 16 Q Any part of it.
 17 A No, not really.
 18 Q You were kind enough to think about that
 19 answer for a little bit. Can you recall any
 20 involvement in the bid process? Even something as
 21 basic as gathering bid information for potential
 22 subs or anything like that?
 23 A The only part I had in it would be
 24 materials. Pricing of materials for the bid. Like
 25 concrete, steel, and the such. That would be about

Page 18

1 it.
 2 Q Not materials like pumps, and pipe, and
 3 all of that?
 4 A No.
 5 Q No?
 6 A Nope.
 7 Q Did you play any role in determining the
 8 actual design? And by that I mean general layout of
 9 the dairy? Where the freestalls would go? Anything
 10 like that?
 11 A Nope. No, Chuck basically had a design
 12 that he wanted. And that is a real common design
 13 for dairies.
 14 Q Before the project started were you at any
 15 meetings with Chuck where he either showed you a
 16 design or talked about a design he had?
 17 A Nope.
 18 Q Were you at any meetings with Chuck before
 19 the project started?
 20 A Nope.
 21 Q Prior to the project starting did you know
 22 Chuck DeGroot?
 23 A Nope. Well, years and years ago I
 24 probably met him. But didn't really know him.
 25 Q As part of the project at Mr. DeGroot's

Page 19

1 place when is the first time you recall meeting him?
 2 A Oh, within the first week after we were
 3 working there.
 4 Q Do you recall about when you started?
 5 A End of July. First part of August.
 6 Q Within a week of starting you met
 7 Mr. Chuck DeGroot. As part of your work on the
 8 project did you meet Ernest DeGroot?
 9 A Not the first week, no. Later on I did.
 10 Q Can you recall how much into the project
 11 you were before you met Ernest?
 12 A No, not really.
 13 Q A while ago we talked about perhaps the
 14 possibility that you might be able to locate some
 15 plans or some of the other material or information
 16 that was referenced in Deposition Exhibit No. 1.
 17 As you think back to that project, when
 18 you started working on it, did you have any sort of
 19 hard plans to use?
 20 A For what I was building, yes.
 21 Q What plans did you have?
 22 A The only thing I had was for the
 23 freestalls. The dairy layout and the freestall
 24 design. Where the poles went. Footing sizes.
 25 Where the barn was going to be. Measurements.

Page 20

1 Stuff like that.
 2 Q What did you – and you discussed it to
 3 some extent. You had a specific scope that you were
 4 going to do as your part of the project; correct?
 5 A Um-hmm.
 6 Q Is that "yes"?
 7 A Yes.
 8 Q I have to keep doing that. It just reads
 9 a lot better. All witnesses do it. So don't worry
 10 about that. Every now and then I need a definite
 11 answer. So I'll remind you.
 12 Did you have anything in addition to the
 13 plans you referenced? For instance, did you have a
 14 written contract of any sort that your brother had
 15 entered into with Mr. DeGroot outlining what you
 16 were to do?
 17 A Yeah, my brother would have that. You
 18 know, the bid explained our part of it. What was
 19 included.
 20 Q So your recollection is the bid would be,
 21 for lack of a better term, the contract for the
 22 deal?
 23 A Right.
 24 Q That would be the only contract that
 25 you're aware of?

Page 21

1 A That would be correct.

2 Q Or at least as far as we should say the
3 only written contract that you're aware of?

4 A That would be the only one I'm aware of.
5 Unless it was a change order.

6 Q Do you recall whether or not there were
7 any formal change orders used in this project?

8 A There was a few.

9 Q Do you happen to have copies of those?

0 A I wouldn't personally, no. My brother
1 probably would.

2 Q Let me digress for just a moment. We have
3 your residence. Is there a separate office in Idaho
4 for Beltman Construction?

5 A The office is in Washington. Basically I
6 run Idaho. All the paperwork goes to Washington.
7 One secretary for, you know, both businesses.

8 Q Is that the case even when a project is
9 ongoing? Any paperwork goes up to Washington on
0 pretty much a day-to-day basis?

1 A All my accounts are all billed to
2 Washington. Every business I deal with is billed to
3 Washington.

4 Q So all of the subs are paid out of
5 Washington? All of the vendors are paid out of

Page 22

1 Washington?

2 A Yes, they are.

3 Q Is that the case when you were working on
4 Mr. DeGroot's project?

5 A Yes, it was.

6 Q As part of your personal business
7 operations do you keep any sort of calendar or
8 daytimer recording what you do on a given day?

9 A Time sheets for my employees.

0 Q Do you have time sheets for yourself?

1 A It would be a book, if I did. Basically,
2 no, I don't.

3 Q Did you play any role in any of the
4 billings for the DeGroot project?

5 A No.

6 Q Now, when you say you had some plans of
7 some sort for what you were building. And you
8 referenced freestalls. You referenced a barn. You
9 indicated you had various measurements. That sort
0 of thing.

1 Was it your understanding that there would
2 be subcontractors working on the project, also?

3 A Yes, it was.

4 Q And from your understanding what was your
5 role in relation to the subcontractors?

Page 23

1 A Basically I didn't have much to do with
2 the barn. That was subbed out. It was part of our
3 bid, but I really had nothing to do with that.

4 Q But it was part of your bid, right?

5 A Yes.

6 Q And to what entity was the barn subbed?

7 A It was Bruce Cooper Construction.

8 Q You say you didn't have much to do with
9 it. Did you have anything to do with the
10 construction of the barn?

11 A My brother and Bruce Cooper put the bid
12 together. And then Bruce got paid X amount of
13 dollars to build this barn. And there was certain
14 things in the barn that I did for Bruce.

15 Q As part of the agreement?

16 A And he paid Beltman Construction. Like
17 any welding that needed to be done in the barn. And
18 fences. And that sort of thing. That is what we
19 do. So he had us do that.

20 Q Since Cooper Construction was a sub of
21 Beltman --

22 A Basically, yes.

23 Q Well, Beltman was the general contractor;
24 right?

25 A Yes.

Page 24

1 Q Did Beltman pay Cooper Construction?

2 A I'm not real sure how that worked.

3 Q But to your understanding somehow the work
4 you did on certain parts of the project was billed
5 back to Cooper Construction and they paid Beltman
6 for your time?

7 A I think the way it was bid is that the
8 barn itself, the dairy barn/milking parlor, was a
9 separate bid tied in with the whole dairy facility.
10 It was its own paperwork.

11 Q But it was bid as a subcontractor, right?

12 A It was basically bid together, yes.

13 Q And your brother submitted the bid, right?

14 A Yes.

15 Q What if Cooper had started to build the
16 barn in the wrong place? Would you have any
17 responsibility for having them put it in the right
18 place?

19 MR. DINIUS: Object to the form.

20 THE WITNESS: Oh, yeah.

21 Q (BY MR. McCURDY) So we have Cooper
22 Construction. And there were other subs on the job,
23 too. Correct?

24 A Yes.

25 Q One was Standley?

Page 32

- 1 A I seen Chuck at a football game last
2 Saturday.
- 3 Q Did you talk about this matter at all?
- 4 A Nope.
- 5 Q So the project started in July or August.
6 And we have talked about what you viewed as your
7 responsibility. Earlier you indicated that there
8 were some change orders.
- 9 As we are sitting here today can you
10 recall what the change orders involved?
- 11 A Oh, little things like hydrants inside a
12 calving barn. Putting rubber down for the cows to
13 walk on.
- 14 Q Anything else you recall?
- 15 A No, not offhand.
- 16 Q I know you weren't involved in the
17 billing. But as the project went on were interim
18 billings submitted to Mr. DeGroot by Beltman
19 Construction?
- 20 A What do you mean by that?
- 21 Q Well, you know what a billing is; right?
- 22 A Yes.
- 23 Q Do you know what "interim" means?
- 24 A No. Explain to me.
- 25 Q Sometimes in construction projects, as a

Page 34

- 1 company works on a project, periodically, perhaps
2 monthly, or by completed portion of the project,
3 they will submit a billing so they can get a draw
4 for what they have done.
- 5 A That is how it was done, yes. There was a
6 draw.
- 7 Q As you were working on the project were
8 you aware of any disputes developing or arising
9 between Mr. DeGroot and Beltman Construction about
10 the work Beltman and the subs were doing on the
11 project?
- 12 A Nope. Never had no problem with any of my
13 work.
- 14 Q And I included Standley in that. Were you
15 aware of any problems with Standley's work while the
16 project was going on?
- 17 A Oh, there was a couple things I didn't
18 like.
- 19 Q What?
- 20 A Oh, not being there when they should.
- 21 Q What else?
- 22 A That was mainly it.
- 23 Q When you say not being there when they
24 should, what do you mean? How did you determine
25 when they should be there?

Page 35

- 1 A Well, when you're ready for some pipe to
2 go in the ground you need it right now and not wait
3 for it.
- 4 Q And what system did you have in place to
5 alert Standley to the timing of when you might need
6 their pipe to go into the ground?
- 7 A Oh, I would talk with Jeff, usually.
- 8 Q Had you established any sort of written
9 construction schedule? What was supposed to happen
10 and when?
- 11 A If there was, I'm not aware of it.
- 12 Q I asked if you did.
- 13 A I didn't, no.
- 14 Q And you were the foreman of the project;
15 correct?
- 16 A Yes, I was.
- 17 Q To your knowledge, had Stan prepared any
18 sort of flow chart about the project?
- 19 A I think there was something said like
20 nine, ten months, or a year to complete the project.
- 21 Q But not a flow chart that would advise the
22 subs the time frame within which they were supposed
23 to do something in relation to the other subs or
24 you? Nothing like that?
- 25 A No, not that I know of.

Page 36

- 1 Q So the only problem that you recall with
2 Standley was that they weren't there when you
3 thought they should be there from time to time.
4 Correct?
- 5 A Yes.
- 6 Q Did you ever address that issue with Jeff
7 or anyone else from Standley?
- 8 A Yes.
- 9 Q Who did you speak with?
- 10 A Jeff.
- 11 Q What did you tell him?
- 12 A I don't know what I told him. I probably
13 just told him when we get to that point we need you
14 there.
- 15 Q Did that correct the issue?
- 16 A Somewhat. No. Sometimes it did and
17 sometimes it didn't.
- 18 Q How often did that come up?
- 19 A Well, I know they were busy on another
20 dairy while they were doing this project.
- 21 Q How often did that come up?
- 22 A What? That he wasn't there on time?
- 23 Q Right.
- 24 A Oh, a few times.
- 25 Q What is a few?

Julie Klein Fischer
 Kevin E. Dinius
 Jill S. Holinka
 WHITE PETERSON, P.A.
 5700 East Franklin Road, Suite 200
 Nampa, Idaho 83687-7901
 Telephone: (208) 466-9272
 Facsimile: (208) 466-4405
 ISB Nos.: 4601, 5974, 6563
 Email: *jkf@whitepeterson.com*
 ked@whitepeterson.com
 jholinka@whitepeterson.com

LOGGED
FILED
 A.M. 4:15 P.M.
FEB 15 2005
 CANYON COUNTY CLERK
 P. SPIERING, DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

<p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Plaintiffs,</p> <p>-vs-</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., and J. HOULE & FILS, INC., a Canadian corporation;</p> <p>Defendants.</p>	<p>CASE NO. CV 2001-7777</p> <p>PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT STANDLEY TRENCHING, INC., d/b/a/ STANDLEY & CO.'S MOTIONS FOR SUMMARY JUDGMENT ON THE SECOND AMENDED COMPLAINT AND COUNTERCLAIM</p>
<p>STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO.,</p> <p>Counterclaimant,</p> <p>-vs-</p> <p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Counterdefendants.</p>	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT STANDLEY TRENCHING, INC., d/b/a/ STANDLEY & CO.'S MOTION FOR SUMMARY JUDGMENT - 1

COME NOW, Charles Degroot and DeGroot Farms, LLC, the above-named Plaintiffs, by and through their attorneys of record, the law firm of WHITE PETERSON, P.A., and hereby submit their Memorandum in Opposition to Defendant Standley Trenching, Inc., d/b/a/ Standley & Co.'s Motion for Summary Judgment on Counterclaim.

**I.
INTRODUCTION**

This case arises out of the (improper) installation of defective manure handling equipment by Defendants Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley") and J. Houle & Fils, Inc. (hereinafter "Houle") at the 2,000 head dairy operated by Plaintiffs Charles DeGroot and DeGroot Farms, LLC, (hereinafter collectively "DeGroot"). Defendant Standley now moves this Court for summary judgment on the Complaint on the basis that there is no direct contractual relationship between DeGroot and Standley on which DeGroot can base its claims. Further, Standley alleges that DeGroot is not a third-party beneficiary of the bid contract entered into between Beltman Construction, Inc. ("Beltman") and Standley.

Standley has also moved for summary judgment on its counterclaim. However, because genuine issues of material fact remain on the claims asserted in Plaintiffs' Complaint—which also constitute some of DeGroot's affirmative defenses to the counterclaim—summary judgment is not appropriate. Consequently, Standley's motions for summary judgment should be denied.

**II.
STATEMENT OF FACTS**

Sometime in 1998, DeGroot purchased a parcel of real property in Melba, Idaho, for the purpose of establishing a 2,000-plus cow dairy. Deposition of Charles DeGroot ("DeGroot Depo."), 55:1-12 (attached as Exhibit "A" to the Affidavit of Kevin E. Dinius filed concurrently herewith). Thereafter, in February 1999, DeGroot spoke with Kurt Standley at a trade show in

California about installing a manure handling system at his new dairy. DeGroot Depo., 86:17 – 88:7; Deposition of Kurt Standley (“Standley Depo.”), 51:20-24 (attached as Exhibit “H” to Dinius Aff.). Following the trade show, Standley was provided with a set of plans for the proposed DeGroot dairy and put together a bid for the DeGroot dairy project. Standley Depo., 52:11 – 54:6.

In June 1999, Beltman was hired as the general contractor for the construction of DeGroot’s dairy. DeGroot Depo., 67:23-25, 101:22 – 103:1. Beltman thereafter contracted with Standley to design and install manure handling equipment for DeGroot’s dairy. *Id.* at 68:24 – 69:6; 75:18-25. Although Beltman was the general contractor, he relied on Standley’s expertise in installing the manure handling system. Deposition of Tom Beltman (“Beltman Depo.”), 31:16-18 (attached as Exhibit “G” to Dinius Aff.). DeGroot, too, relied upon Standley’s expertise and representations regarding the Houle equipment that would be installed at the dairy during the construction of the dairy. DeGroot Depo., 148:21-23, 261:19-24; Deposition of Ernest DeGroot (“E. DeGroot Depo.”), 40:21-24 (attached as Exhibit “F” to Dinius Aff.).

Although Plaintiffs were not a party to the contract between Beltman and Standley, they were the intended beneficiary of that contract. DeGroot Depo. 67:23 – 69:8, 77:11-22; *See also*, Plaintiffs’ Second Amended Complaint, ¶s 15, 22, 55; Exhibits “B”-“E” of Dinius Aff. Further, following Standley’s installation of the manure handling equipment, DeGroot worked directly with Standley to try and correct numerous defects in the manure handling system. DeGroot Depo., 130; E. DeGroot Depo., 116:23 – 117:3.

From August through November 1999, Defendant Standley designed and selected the materials and equipment for, and subsequently installed, the manure handling equipment at the DeGroot dairy. DeGroot Depo., pp. 68-69; Exhibit E to Dinius Aff.; Standley Depo., pp. 53-67,

75:18 – 79:7. Although the manure handling system installed by Standley worked briefly after DeGroot began operation of the dairy, shortly thereafter it failed and Plaintiffs were “always repairing it.” DeGroot Depo., 175:14; *see also* E. DeGroot Depo., 49:3-12.

Some of the manure handling equipment installed by Standley, was manufactured by Defendant J. Houle & Fils, Inc. (hereinafter “Houle”). Exhibits 7-9, 16-20 to Standley Depo. Standley is the exclusive dealer in Idaho for Houle equipment. Standley Depo., 17:21 – 20:5. Likewise, Houle reviewed and approved the manure handling system and equipment as designed by Standley. Deposition of Troy Hartzell (“Hartzell Depo.”), 25:11 – 32:17 (attached as Exhibit “P” to Dinius Aff.). Further, Houle’s representative, Troy Hartzell, was involved in the design of the system, the selection of equipment and the initial startup of the system. *Id.*

The problems with the system installed by Standley were numerous, and were brought to Standley’s attention. E. DeGroot Depo., 49:3-12, 51:8-13, 55:2-7, 72:23 – 73:5. First, the lagoon pump, which supplied water for flushing the free stalls was inadequate and required many modifications and upgrades. Standley Depo., 226:1-23, 233:9 – 234:21. As originally designed, Standley installed a forty-horse power pump. Standley Depo., 83:15-24. The initial pump was later replaced by a fifty and ultimately seventy-five horsepower pump. *Id.* at 222:12-23, 230:5-9. These attempts to increase the volume of water from the lagoon pump were not effective, and instead caused serious electrical problems. *Id.* at 223:22 – 224:5. Specifically, Idaho Power had to replace the transformer because the pump(s) were blowing bayonet fuses due to failure of the breaker box installed at the south end of the lagoon. Standley Depo., 223:22 – 225:12. DeGroot incurred over \$5,000.00 in expenses for electrical repairs to the pump and breaker box at the lagoon. Exhibit J to Dinius Aff. It also is significant that despite Standley’s various attempts to increase water volume for flushing, through increased horse power, the free stalls still were not

washed properly, instead requiring frequent manual scrapings that otherwise would not be necessary. E. DeGroot Depo., 89:17 – 90:17.

Second, DeGroot expended sizeable sums in renovating the manure screening setup. Exhibit J to Dinius Aff. Standley originally installed two roller presses and two slope screens to handle the dairy waste. Standley Depo., 75:23 – 76:13. The roller presses moved the manure onto a conveyor which, in turn, moved the manure to a stacker. E. DeGroot Depo., 57:11-21. However, the roller presses, conveyor and stacker never functioned as designed, warranted or intended. E. DeGroot Depo., 49:3-12, 72:1-11. Both the conveyor and stacker belts continually broke, resulting in DeGroot paying an estimated \$3,500 in belt replacements. DeGroot Depo., 78:23 – 79:6. In fact, within months of installation, the roller presses, conveyor and stacker were removed and the slope screens were placed atop a concrete wall in an attempt to remedy the inadequate design. E. DeGroot Depo., 87:16 – 88:18. This renovation caused DeGroot to incur additional expenses in the amount of \$16,588.00 (exclusive of its labor costs) that would not have been necessary had the system been properly designed from the outset. Exhibit J to Dinius Aff.

Third, the agitator pumps installed by Standley were not sufficient to keep up with the flow of green water from the free stalls. Standley Depo., 138:18 – 139:12, 245:22 – 248:4. Pursuant to Standley's design, two agitator pumps were installed in the holding pond to pump the manure water through the slope screens. Standley Depo., 76:17-20. However, the two pumps were inadequate to handle the waste created by the dairy cows. Exhibit K to Dinius Aff. Standley's design (two pumps) would be sufficient for a dairy milking between five and six hundred cows – not the number of cows DeGroot milked. *Id.* Notably, Standley was aware that the DeGroot dairy was designed to milk over 4,000 cows. Standley Depo., 194:23. As a result,

manure accumulated in the holding pond, which then had to be scraped with a tractor. E. DeGroot Depo., 89:17-25. The manure scraped from the holding pond could not be run through the slope screens, thus reducing the amount of compost ultimately available for use in the free stalls, not to mention the difficulty associated with scraping out the holding pond.

Based upon the numerous design and installation flaws associated with the manure handling system installed at the dairy, DeGroot was forced to replace the manure handling equipment and install equipment capable of handling the needs of the dairy. E. DeGroot Depo., 86:24 – 87:9. DeGroot revoked its acceptance of the manure handling equipment sold and installed by Standley. Exhibit L to Dinius Aff. In connection with this revocation, demand was made for the return of \$119,575 which reflected all sums paid by or on behalf of DeGroot only for the manure handling equipment (Standley was paid approximately \$230,000 for the design, installation and equipment associated with the system). *Id.*

Additionally, demand was made for \$25,088 which reflects the amount DeGroot spent, as a result of Standley's actions and/or inactions, to repair electrical problems and construct the concrete separating wall referenced above. *Id.* These repairs and modifications were necessary only because of Standley's improper design and installation of the system. Exhibit K to Dinius Aff. Furthermore, there is approximately \$116,000 worth of work yet to do to remove improperly sized pipe and faulty flush valves selected and installed by Standley. *Id.* Finally, although Standley continued to bill DeGroot for approximately \$20,000 worth of expenses incurred after completion of the dairy, those charges were incurred as a result of the various installation and engineering problems discussed above.

At no time did Houle or Standley ever provide DeGroot with Owner's Manuals for the equipment nor did they inform DeGroot of required maintenance on the equipment. Standley

Depo., 134:9-17; E. DeGroot Depo., 69:21 – 70:2. Rather, Standley's and Houle's representations assured DeGroot the system would function as intended and would all but run itself with little if any involvement by DeGroot. E. DeGroot Depo., 40:18-23, 68:14-17. Additionally, Standley failed to provide any training to DeGroot on the manure handling system. *Id.* at 69:15-20.

As a direct and proximate result of the numerous inadequacies with the manure handling system, DeGroot suffered damages in the form of lost milk production, increased labor costs, costs to correct the system, loss of feed in the free stalls, costs associated with repairing the system as well as future costs to correct the system installed by Standley. Exhibit K to Dinius Aff. DeGroot hired Mr. Kenneth E. Hooper to calculate its economic loss caused by the improperly designed system. *Id.* Conservatively, Mr. Hooper estimates DeGroot's damages between \$603,005 and \$691,920 – exclusive of attorney fees and costs. *Id.*

Thereafter, Plaintiffs continued to experience problems with various parts of the manure handling system, particularly its inability to adequately flush the lanes, the undersizing of the drain pipe, the collection pit which was too shallow, the inadequate roller presses and slope screens, and problems with the conveyor belts that transported the pressed manure to a stacker. *See* DeGroot Depo., pp. 117, 147, 167, 175, 188-192. As a result of these continued problems, Plaintiffs filed their complaint against Standley and Houle, alleging (1) breach of contract against Standley; (2) rescission against Standley and Houle; (3) breach of warranties against Standley and Houle; (4) breach of implied covenant of good faith and fair dealing against Standley; and (5) violations of the Idaho Consumer Protection Act against Standley and Houle. *See* Second Amended Complaint.

III. STANDARD OF REVIEW

Under Idaho law, summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *see also Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). In applying this standard, the Court liberally construes all disputed facts in favor of the non-moving party, and will draw all reasonable inferences and conclusions supported by the record in favor of the party opposing the motion. *See McKay v. Owens*, 130 Idaho 148, 152, 937 P.2d 1222, 1226 (1997). However, the adverse party may not rest on the mere allegations or denials in his pleadings, but his response must set forth specific facts showing that there is a genuine issue for trial. *See Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000).

IV. ARGUMENT

A. Plaintiffs Are Third-Party Beneficiaries of the Bid Contract Between Beltman and Standley and Are Therefore Entitled to Enforce the Contract.

In its Motion for Summary Judgment, Defendant Standley’s primary challenge to Plaintiffs’ claims for relief lies in its assertion that because Plaintiffs do not have a contractual relationship with Standley, DeGroot is not entitled to relief on the claims asserted in the Second Amended Complaint. As the intended beneficiary of the bid contract between Beltman and Standley, however, DeGroot is entitled to enforce the contract and to obtain damages for Standley’s breach.

A general rule of contract law provides that a person not in privity to a contract cannot sue upon that contract. *Wing v. Martin*, 107 Idaho 267, 688 P.2d 1172 (1984). However, an

exception to the privity rule exists where the contract was made for the direct or primary benefit of a third party. Idaho Code §29-102 expressly provides that:

Enforcement by a beneficiary.—A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

The basic test for determining a party's status as a third party beneficiary is whether the agreement reflects an intent to directly benefit such third party. *Seubert Excavators, Inc. v. Eucon Corp.*, 125 Idaho 744, 874 P.2d 555 (Ct. App. 1993), *aff'd in part, rev'd in part*, 125 Idaho 409, 871 P.2d 826 (1994). Intent must be gleaned from the contract itself "unless that document is ambiguous, whereupon the circumstances surrounding its formation may be considered." *Stewart v. Arrington Construction Co.*, 92 Idaho 526, 532, 446 P.2d 895 (1968). It is not necessary that the plaintiff be named and identified individually within the agreement. *Just's Inc. v. Arrington Construction Co.*, 99 Idaho 462, 464, 583 P.2d 997 (1978).

In this case, the contract executed by Standley to design and install a manure handling system for DeGroot's dairy was made for the direct and primary benefit of DeGroot. Prior to submitting its bid Standley met with Mr. DeGroot, marketed the Houle equipment, and spoke with him specifically about submitting a bid for installation of the manure handling system. At the time the contract was entered into, Standley knew that DeGroot would be paying for the construction of the dairy, including installation of the manure handling system. Thus, installation of the manure handling system would inure to the benefit of DeGroot upon completion. Further, DeGroot was named the "customer" on Standley's invoices, thus indicating Standley's knowledge that the installation of the manure handling system was for the benefit of DeGroot. Exhibits B-D of Dinius Aff. Clearly, the Beltman/Standley contract was made for the benefit of DeGroot because without payment from DeGroot, the customer, there would be no

need to even install the system. Therefore, as the intended beneficiary of the Beltman/Standley contract, DeGroot is entitled to enforce that contract. Consequently, Defendant's argument fails and Defendant is not entitled to judgment as a matter of law.

Despite the clear and overwhelming evidence establishing that DeGroot is the intended third-party beneficiary of the bid contract, Standley argues that a recent decision of the Idaho Court of Appeals precludes DeGroot from recovering damages for Standley's breach of contract. In *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004), the court held that the plaintiff homeowners could not recover from a materials supplier for breach of contract under a third-party beneficiary theory where the homeowners produced no evidence that the contract expressed an intent to benefit them. Although Standley cites *Nelson* as being directly on point with respect to the issues presented in this case, several distinguishing factors are notable.

At the outset, it is important to note that the plaintiffs in *Nelson* did not predicate their claims on a third-party beneficiary theory in their complaint. 140 Idaho at 709. In fact, it was not until the hearing on the defendant's motion for summary judgment that the plaintiffs argued this theory. Even at that point, however, the plaintiffs failed to adduce any evidence to support such a theory. *Id.* In contrast, DeGroot's Second Amended Complaint plainly alleges a third-party beneficiary theory. Thus, to the extent the court did not have sufficient information to fully consider the effect a third-party beneficiary theory would have in reaching its decision, *Nelson* is not directly on point.

The factual circumstances in *Nelson* are also distinguishable from the facts presented in this case. For example, the subcontractor in *Nelson* was simply a materials supplier. In this case, Standley is more than just a materials supplier; it actually assisted in the design and installation of the manure handling system. Additionally, there was no evidence in *Nelson* that

the contract between the general contractor and the lumber supplier expressed an intent to benefit the plaintiffs. 140 Idaho at 709. In contrast, the evidence in this case clearly establishes that Standley knew it was providing the manure handling system for DeGroot at the time it submitted the bid to Beltman. Exhibit 2 to Standley Depo.

The decision in *Nelson* notwithstanding, a finding that DeGroot is not entitled to recover from Standley is not in the best interest of judicial economy and would lead to an absurd result. The following example, cited by the Idaho Supreme Court in *Tusch Enterprises v. Coffin*, 113 Idaho 37, 51, 740 P.2d 1022 (1987), illustrates this point:

...suppose an unscrupulous builder constructed a home of inferior quality and sold it to another. Suppose further, that for whatever reason, the buyer after three months sold the home to a second purchaser. And one month later the foundation of the house split apart rendering the home valueless. Should the common law deny the subsequent purchaser a remedy against the builder merely because there is no privity of contract and because the damages happen to be purely economic, when it was the conduct of the builder which created the latent defect in the first place?

Although the question presented in *Coffin* was whether subsequent purchasers of residential dwellings, not in privity with the builder, could recover from the builder for latent defects based upon an implied warranty of habitability, its rationale is no less compelling in this case. If DeGroot is limited to bringing an action against his general contractor—when it is clear that it is the subcontractor that has breached his contract—the result would most likely be that the general contractor would then bring an action against the subcontractor. Clearly, this scenario does not encourage judicial economy and only serves to waste resources. The better reasoned approach is to allow DeGroot to recover from Standley, particularly when it is clear that the bid contract expressed an intent to benefit DeGroot.

B. DeGroot is Entitled to Seek Rescission Against Standley.

Standley next asserts that because there was no direct contractual relationship between it and DeGroot, DeGroot cannot revoke its acceptance of the equipment provided by Standley. Again, however, the relationship between Standley and DeGroot is not nearly as simplistic as Standley makes it out to be. As discussed previously, Standley was a dealer of Houle equipment at the time it entered into the contract to design and install the manure handling system in the DeGroot dairy. Standley specifically discussed Houle equipment with Mr. DeGroot at a trade show several months before construction began on the DeGroot dairy. Once the equipment was installed, Standley continued to make service calls to the dairy to repair the malfunctioning equipment. Thus, regardless of whether DeGroot purchased the equipment from Standley by way of its construction contract with Beltman, the fact remains that DeGroot purchased the Houle equipment from Houle's authorized dealer, Standley. Therefore, DeGroot is entitled to revoke its acceptance of the equipment from Standley.

Pursuant to Idaho Code § 28-2-608 a buyer may revoke acceptance of goods if the non-conformity of the goods substantially impairs their value, and if the buyer has accepted the goods on the reasonable assumption that the non-conformity would be cured and it has not seasonably been cured. Idaho Code § 28-2-608(1)(a); *Beal v. Griffin*, 123 Idaho 445, 449, 849 P.2d 118 (Ct. App. 1993). Under the Uniform Commercial Code, a "buyer" is one who "buys or contracts to buy goods;" a "seller" is one who "sells or contracts to sell goods." Idaho Code § 28-2-103(a), (d). (emphasis added.) Acceptance can only be revoked within a reasonable time after the buyer discovers or should have discovered the ground for the revocation. Idaho Code § 28-2-608(2). A buyer rejects non-conforming goods by taking affirmative action to avoid acceptance and by notifying the seller of the rejection within a reasonable time. Idaho Code § 28-2-602.

With respect to DeGroot's entitlement to rescission, it is notable what Standley does not argue. It does not argue, for example, that DeGroot did not effectively revoke acceptance by sending notice of the revocation. Likewise, Standley does not argue that DeGroot's notice of revocation was not given within a reasonable time. Indeed, the only argument Standley offers in support of its claim that DeGroot is not entitled to rescission is that there is no contractual relationship between Standley and DeGroot. Notably, however, Standley offers no support for its claim that a contractual relationship is required by the UCC. This is most likely because the UCC does not, in fact, require such a contractual relationship, as the definitions of "buyer" and "seller" make clear. By using the disjunctive "or" within the definition, it is clear that the legislature contemplated even the simplest sales transaction, which would not include a contract to buy. Consequently, Standley's motion for summary judgment on DeGroot's rescission claim should be denied.

C. **DeGroot is Entitled to Seek Damages for Standley's Breach of Express and/or Implied Warranties.**

Next, Standley argues that DeGroot cannot recover damages for Standley's breach of express and implied warranties because there is no direct contractual relationship between it and DeGroot. As discussed previously, however, the evidence establishes that DeGroot was a third-party beneficiary of the bid contract between Standley and Beltman. As such, DeGroot can recover damages for Standley's breach of warranties.

1. *Express Warranties.*

Idaho Code § 28-2-313(1) indicates when express warranties are created by a seller:

- (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

Express warranties may be created by the manufacturer, seller or builder by way of contract, advertising materials, oral representations or descriptions regarding the condition or performance of the product. *Jensen v. Seigel Homes Group*, 105 Idaho 189, 194-95, 668 P.2d 65 (1983). The buyer of goods need not rely on the affirmation of fact, promise or description for the same to become part of the basis of the bargain. *Id.* at 195. An affirmation of fact is assumed to become the basis of the bargain. *Tolmie Farms, Inc. v. J.R. Simplot Co., Inc.*, 124 Idaho 607, 611, 862 P.2d 299 (1993).

In this case, Standley argues that there is no evidence that Standley made any express warranties to DeGroot. The only evidence Standley relies on to support this argument, however, is Mr. DeGroot's testimony that he had no direct contract with Standley. However, a direct contractual relationship does not appear to be required by the statute itself or the case law interpreting the statute. Moreover, Mr. DeGroot's testimony notwithstanding, there is ample evidence showing that Standley did, in fact, make certain affirmations of fact that amount to express warranties. For example, Ernest DeGroot testified in his deposition that he recalled Jeff Griggs, a Standley employee, telling him (with respect to whether DeGroot should be performing any maintenance on the manure handling system), "You won't have to worry about it." E. DeGroot Depo., 40:23. Moreover, Standley spoke with Mr. DeGroot in February 1999 about Houle equipment and about installing such equipment in DeGroot's dairy. Indeed, Standley held itself out as having specific expertise in Houle's manure handling equipment, which is why DeGroot ultimately decided to have Standley involved in the project. Given these factors, it is

clear that Standley did provide express warranties to DeGroot. Consequently, summary judgment on this issue is not appropriate.

2. *Implied warranties.*

DeGroot also seeks recovery for Standley's breach of the implied warranties of merchantability and fitness for a particular purpose. Idaho Code § 28-2-314(1) provides that "unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." To be merchantable, the goods must be at least such as (1) pass without objection in the trade under the contract description; (2) are fit for the ordinary purposes for which such goods are used; and (3) conform to the promises or affirmations made on the container or label, if any. Idaho Code § 28-2-314(2). Similarly, Idaho Code § 28-2-315 provides:

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Standley relies on *Nelson, supra*, and *Salmon River Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 544 P.2d 306 (1975) to support its argument that without privity of contract, DeGroot cannot recover from Standley for breach of implied warranties. While *Nelson* relied on *Salmon Rivers* as a starting point in reaching its decision that homeowners cannot recover from materials suppliers for breach of warranties unless there is a contract that expresses an intent to benefit the homeowner, the *Nelson* court failed to consider the continued validity of the *Salmon Rivers* decision. Indeed, following its decision in *Salmon Rivers*, the Idaho Supreme Court on two separate occasions questioned its holding in that case.

First, in *State v. Mitchell Construction Co.*, 108 Idaho 335, 699 P.2d 1349 (1984), two members of the Court expressed disapproval of the privity requirement expressed in *Salmon Rivers*. For example, in his concurring opinion, Chief Justice Donaldson advocated the following approach adopted by the Alaska Supreme Court in *Morrow v. New Moon Homes, Inc.*, 548 P.2d 279 (Alaska 1976):¹

Courts and scholars alike have recognized that the typical consumer does not deal at arms length with the party whose product he buys. Rather, he buys from a retail merchant who is usually little more than an economic conduit. It is not the merchant who has defectively manufactured the product. Nor is it usually the merchant who advertises the product on such a large scale as to attract customers. We have in our society literally scores of large, financially responsible manufacturers who place their wares in the stream of commerce not only with the realization, but with the avowed purpose, that these goods will find their way into the hands of the consumer. Only the consumer will use these products; and only the consumer will be injured by them should they prove defective.

Mitchell Construction, 108 Idaho at 338 (Donaldson, C.J., concurring)(internal citations and quotations omitted). In advocating the abolition of the privity requirement, the *Morrow* court noted that limiting consumers to an implied warranty action under the UCC against their immediate sellers “in those instances where the products defect is attributable to the manufacturer would effectively promote circularity of litigation and waste of judicial resources.” *Id.* Although the *Mitchell* court called into doubt the validity of *Salmon Rivers*, a majority of the court found that the evidence was insufficient to establish the existence of warranties; therefore,

¹ In spite of his disapproval of the *Salmon Rivers* holding, Chief Justice Donaldson concurred in the result because *Mitchell* presented no evidence to support its claims that express warranties were given by the subcontractor. Justice Huntley offered a dissenting opinion that likewise questioned the continued validity of the *Salmon Rivers* decision.

Salmon Rivers was not expressly overruled. On rehearing, however, Justice Bistline changed his position and voted to overrule *Salmon Rivers*.²

Later, in *Tusch Enterprises, supra*, the Court again voiced its concern with *Salmon Rivers*. As discussed previously, the *Tusch* court held that privity of contract was not required in order for a subsequent purchaser of a residential dwelling to recover against the builder (or builder-developer) based upon the implied warranty of habitability. 113 Idaho at 50-51. In so holding, the Court specifically declined to extend the privity requirement enunciated in *Salmon Rivers*, noting:

Historically, therefore, the only tort action available to a disappointed purchaser suffering intangible commercial loss has been the tort action of deceit for fraud and the only contract action has been for breach of warranty, express or implied. This remains the generally accepted view. A few courts in recent years have permitted either a tort action for negligence or one in strict liability. Usually, the reason for so doing has been to escape the requirement of privity of contract as a prerequisite to recovery on a warranty theory. **But the elimination of this requirement for recovery on a contract-warranty theory would seem to constitute the more satisfactory technique.**

Id. at 50. (internal citations omitted)(emphasis added).

In light of the questionable significance of the *Salmon Rivers* privity requirement, coupled with the overwhelming evidence that DeGroot was the intended third-party beneficiary of the bid contract, summary judgment in favor of Standley on the issue of implied warranties is not appropriate.

² As recognized by Justice Bistline, *Salmon Rivers* remains viable only because Chief Justice Donaldson concurred in the result in *Mitchell*. Thus, the judgment affirming the district court stood up on rehearing even though *Salmon Rivers*, the backbone of the district court's decision granting summary judgment, was overruled.

D. Summary Judgment on DeGroot's Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing is Not Appropriate.

Standley next argues that it is entitled to summary judgment as a matter of law on DeGroot's claim for breach of the implied covenant of good faith and fair dealing because there is no direct contractual relationship between Standley and DeGroot. The only case relied upon by Standley to support this argument is the recent case of *Huyett v. Idaho State University*, 04.25 ISCR 971, 973, __ P.3d __ (2004). *Huyett*, however, involved the alleged breach of an employment contract; a third-party beneficiary theory was not even pled. Thus, while it may indeed be true that a party cannot breach the covenant of good faith and fair dealing if there is no contractual relationship, it is not at all clear that a third-party beneficiary of a contract cannot recover for breach of the covenant.

As discussed previously, a third-party beneficiary of a contract may enforce the contract made expressly for his benefit. Idaho Code § 29-102. As clearly set forth in the deposition testimony and exhibits relied upon by DeGroot (and discussed previously), the bid contract was made expressly for DeGroot's benefit. Therefore, DeGroot is entitled to enforce the bid contract, which includes claims for breach of the covenant of good faith and fair dealing. Because the evidence clearly establishes DeGroot is a third-party beneficiary of the bid contract, summary judgment is not appropriate on DeGroot's claims for breach of the covenant of good faith and fair dealing.³

E. Genuine Issues of Material Fact Remain on DeGroot's Claim Under the Idaho Consumer Protection Act.

Standley next asserts that DeGroot has not alleged sufficient facts to support its claims under the Idaho Consumer Protection Act ("ICPA") and therefore summary judgment is

³ Standley does not assert any additional factual or legal issues that would entitle it to summary judgment on DeGroot's claim for breach of the covenant of good faith and fair dealing.

appropriate. In support of this argument, Standley apparently asserts that because DeGroot did not make certain allegations in its Second Amended Complaint about the quality of the goods provided by Standley, that DeGroot's claim under the ICPA should be dismissed. Keeping in mind the summary judgment standard that all inferences will be construed in the light most favorable to the non-moving party, however, Standley's argument is without merit. Moreover, there is more than sufficient evidence in the record to support DeGroot's claims.

Under the ICPA,

the following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

...

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of particular style or model, if they are of another;

...

Idaho Code § 48-603. The acts or practices that are unlawful under the Act are only those that are "in the conduct of any trade or commerce." I.C. § 48-603. *In re Western Acceptance Corp., Inc.* 117 Idaho 399, 401, 788 P.2d 214 (1990). "Trade" and "commerce" are defined by the Act to mean "the advertising, offering for sale, sale, or distribution of any goods or services, directly or indirectly affecting the people of this state." I.C. § 48-602(2).

In interpreting the ICPA, Idaho courts have held that it is a sale that is the crucial event in determining whether a transaction is subject to the Act. *Western Acceptance Corp.*, 117 Idaho at 401. Likewise, a cause of action under the ICPA must be based on a contract. *Haskin v. Glass*, 102 Idaho 785, 788, 640 P.2d 1186 (Ct. App. 1982). A review of the cases reveals, however,

that Idaho courts have not had occasion to determine whether a third-party beneficiary of a contract may bring an action under the ICPA. Even if DeGroot is found not to be a third-party beneficiary of the bid contract entered into between Standley and Beltman, the factual circumstances of this case require that DeGroot be allowed to pursue his claims under the ICPA against Standley.

In this case, Standley is a dealer of Houle equipment. Standley Depo., 41:4-11. As a dealer, Standley held itself out as having particular expertise and knowledge of Houle equipment by appearing at trade shows in Idaho and California. DeGroot Depo., 86:17 – 88:12; E. DeGroot Depo., 68:11-17. It was at one of these trade shows that DeGroot spoke with Kurt Standley about using Houle equipment in DeGroot's dairy. *Id.*

In fact, the very equipment that Standley was displaying at its trade show in Nampa was the equipment that was ultimately installed at DeGroot's dairy. E. DeGroot Depo., 68:5-8. As evidenced by the numerous defects in the manure handling system designed and installed by Standley, however, it is at least questionable whether Standley actually did have such expertise. Given that there are still genuine issues of fact regarding the nature of Standley's representations about his expertise and/or the Houle equipment, summary judgment is not appropriate.

F. Standley is Not Entitled to Attorney Fees.

Upon a finding that Standley is entitled to summary judgment, Standley asserts that it is entitled to an award of attorney fees pursuant to Idaho Code §§ 12-120(3), 12-121 and 48-608(4). Because Standley is only entitled to an award of attorney fees if it prevails on its motions for summary judgment, however, its request for attorney fees is premature. Should Standley prevail on its motions, DeGroot reserves the right to provide additional briefing on this issue.

G. Because Genuine Issues of Material Fact Remain on DeGroot's Claims in the Second Amended Complaint, Summary Judgment is Not Appropriate on Standley's Counterclaim.

Standley has also moved for summary judgment on its counterclaim for an account stated/open account on the basis that there is no genuine issue of material fact as to whether the charges were incurred and remain due and owing. Given that genuine issues of material fact remain on the causes of action alleged by DeGroot in its Second Amended Complaint, which also constitute several of DeGroot's affirmative defenses to the counterclaim, summary judgment is not appropriate.

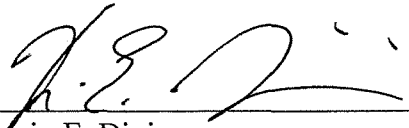
**V.
CONCLUSION**

For the reasons set forth hereinabove, Plaintiffs assert that there remains a genuine issue of material fact for trial regarding all Plaintiffs' causes of action in this case. Therefore, Plaintiffs respectfully request this Court to deny Defendant Standley's Motions for Summary Judgment in their entirety.

DATED this 15th day of February, 2005.

WHITE PETERSON, P.A.

By: _____


Kevin E. Dinius
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2005, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Mike Kelly
HOWARD LOPEZ & KELLY
P.O. Box 856
Boise, Idaho 83701-0856

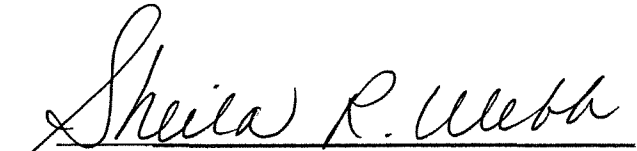
US Mail
 Overnight Mail
 Hand Delivery
 Facsimile No. 208-342-4344

Robert D. Lewis
CANTRILL, SULLIVAN & KING
P.O. Box 359
Boise, Idaho 83701-0359

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile No. 208-345-7212

William A. McCurdy
BRASSEY, WETHERELL, CRAWFORD &
MCCURDY, LLP
P.O. Box 1009
Boise, Idaho 83701-1009

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile No. 208-344-7077


for WHITE PETERSON, P.A.

sw/Z:\Work\DeGroot Dairy, LLC\Standley & Co.-19213\pleadings\Non Discovery Pleadings\Pld opp 2d sj.doc