

12-12-2012

DeGroot v. Standley Trenching, Inc. Clerk's Record v. 2 Dckt. 39406

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(VOLUME 2)
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

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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>AFFIDAVIT OF KEVIN E. DINIUS IN SUPPORT OF MEMORANDUM IN OPPOSITION TO DEFENDANT STANDLEY TRENCHING, INC., D/B/A STANDLEY & CO.'S MOTION FOR SUMMARY JUDGMENT ON 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>	

AFFIDAVIT OF KEVIN E. DINIUS IN SUPPORT OF MEMORANDUM IN OPPOSITION TO DEFENDANT STANDLEY TRENCHING, INC., D/B/A STANDLEY & CO.'S MOTION FOR SUMMARY JUDGMENT ON COMPLAINT AND COUNTERCLAIM - 1

9. Attached hereto as Exhibit "H" is a true and correct copy of relevant portions of the Deposition of Kurt Standley, taken on January 28, 2004.

10. Attached hereto as Exhibit "I" is a true and correct copy of relevant portions of the Deposition of Troy Hartzell, taken on January 29, 2004.


11. Attached hereto as Exhibit "J" is a true and correct copy of Plaintiffs' Supplemental Expert Disclosure, including the expert report of Kenneth Hooper.

12. Attached hereto as Exhibit "K" is a true and correct copy of the report of Cyclus EnviroSystems, Bates No. 00072-00084, provided to Defendants during discovery.

13. Attached hereto as Exhibit "L" is a true and correct copy of Plaintiffs' responses to Defendant Houle's Interrogatories and Requests for Production of Documents.

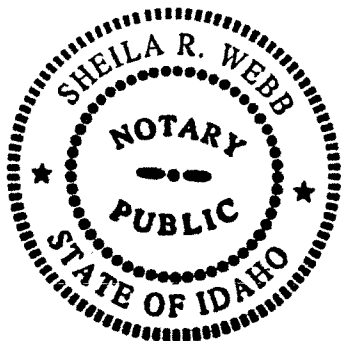
FURTHER YOUR AFFIANT SAYETH NAUGHT.

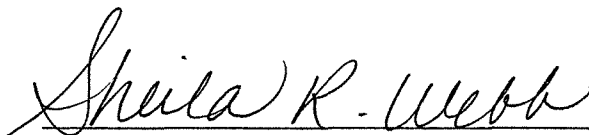
DATED this 15th day of February, 2005.



Kevin E. Dinius

SUBSCRIBED AND SWORN to before me this 15th day of February, 2005.





Notary Public for Idaho
My Commission Expires: 7-17-06

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

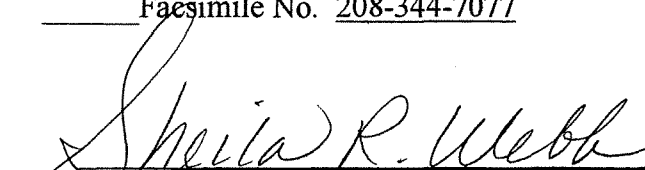
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 Overnight Mail
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for WHITE PETERSON, P.A.

sw/Z:\Work\DeGroot Dairy, LLC\Standley & Co.-19213\pleadings\Non Discovery Pleadings\Pld Aff KED opp 2d sj.doc

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

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1 Q Are you leasing it?

2 A No.

3 Q Renting it?

4 A No.

5 Q When you say you have it, you just use it?

6 A It is part of my waste-water distribution.

7 And I bought the original option on it three years
8 ago. And then I had a one-year extension -- two
9 one-year extensions. And when my -- I have one more
10 year left on that. And I think in the year 2004 or
11 2005 I will exercise the option.

12 Q Are you paying for these option
13 extensions?

14 A Yes.

15 Q And so because the land is under option it
16 is part of the option agreement that you get to use
17 it?

18 A Yes.

19 Q Do any water rights come with the Alsip
20 property?

21 A The only water rights there is the Hat
22 Butte Canal Company.

23 Q As part of your option agreement are you
24 utilizing those water rights?

25 A To?

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1 Q Farm. Or do whatever you need water for.

2 A It is part of the farming operation.
3 Because otherwise you have nothing.

4 Q From whom did you buy your property?

5 A Ken Teigs.

6 Q T-e-i-g-s?

7 A Yes. KP, Inc.

8 Q Does Christensen also farm the ground in
9 the Alsip property?

10 A Yes.

11 Q From whom are you actually -- from whom
12 did you get the option to purchase the Alsip
13 property? Who actually owns it?

14 A John Alsip.

15 Q A-l-s-i-p?

16 A Yes.

17 Q Has the Alsip property been integrated in
18 any other way to your dairy operation? Do you keep
19 any cows on it, for instance?

20 A No.

21 Q So you found a piece of ground in Melba.
22 You decided to buy it. You and your wife decided to
23 buy it.

24 When did the purchase close on the Teigs
25 property?

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1 A Back in '98.

2 Q Do you recall when, approximately?

3 A I would have to look at my documents.

4 Q When you decided on the Melba property
5 what was your concept on how your dairy was going to
6 be set up? What was your basic plan?

7 A The basic plan was to have a dairy built
8 and to milk cows.

9 Q How many cows did you plan on having on
10 the place?

11 A I planned to milk 2,250 capacity. That is
12 milking cows. Not dry cows.

13 Q How many dry cows, roughly, would be part
14 of that? I mean, in addition to that?

15 A Dry cows, 250. And then heifers, that
16 varies.

17 Q Is 10 percent a rough rule of thumb on
18 milking cows and dry cows?

19 A That is a pretty good figure.

20 Q Had you planned on making any design
21 changes, and I mean that in the general term, from
22 your Washington place to your Idaho place? Were
23 there things about your Washington place you wanted
24 to change?

25 A In Idaho?

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1 Q Correct.

2 A I went from an open lot to a freestall.

3 Q Why did you decide to make that change?

4 A Because of the weather element.

5 Q The weather being harsher here than it was
6 up at Sunnyside?

7 A It is very similar.

8 Q So because of the weather you encountered
9 in Sunnyside you wanted to set it up differently in
10 Idaho to protect the cows a little bit more?

11 A Yes.

12 Q And, of course, the weather up here in
13 Idaho and Washington is different than the weather
14 you encountered in California?

15 A Yes.

16 Q What type of arrangement does your
17 brothers-in-law have on open lot versus freestall at
18 their dairies up there?

19 A My one brother-in-law had open lots, but
20 he has converted his dairy to freestall.

21 Q How about your other brother-in-law?

22 A He has open lot. And he has a freestall
23 that I don't think he uses.

24 Q So you were going to go to freestall.
25 What other changes did you want to make?

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1 A He was one of the potential builders.
 2 Q So nine years later, eight years later,
 3 when you're coming to Idaho, you got back in touch
 4 with him.
 5 Is that right?
 6 A Yes.
 7 Q Did he present you with physical plans?
 8 A He did give me physical plans.
 9 Q Did you use those plans in any way?
 10 A Yes.
 11 Q Do we have those plans here today?
 12 A No.
 13 MR. McCURDY: Gee, let's go back to --
 14 just kidding.
 15 Q (BY MR. McCURDY) If you had to find them
 16 do you know where you could find them?
 17 A Probably Beltman.
 18 Q Have you looked for a copy of your own?
 19 A Have I looked for one?
 20 Q Correct.
 21 A No, I have not.
 22 Q Did Mr. Vance charge you for these plans?
 23 A No.
 24 Q Why not?
 25 A Well, it was a general -- most of his

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1 dairies -- that is a general plan.
 2 Q Did he ever get paid for his work on the
 3 dairy?
 4 A For his work --
 5 Q On designing the dairy?
 6 A No.
 7 Q Why not?
 8 A Because I did not use him as a contractor.
 9 Q Was he in a position of design-build
 10 contractor? Is that what you were doing with him?
 11 A Yes.
 12 Q So he presented a design. But he ended up
 13 not getting the job?
 14 A Correct.
 15 Q So he didn't get paid anything. Is that
 16 right?
 17 A Correct.
 18 Q Were there any others that you approached
 19 on a design-build basis? Any other contractors?
 20 A Beltman Construction. Or Beltman Welding.
 21 Q Did Beltman provide you with a plan?
 22 A We used the general plan that we had
 23 with -- that Vance had provided.
 24 Q So Beltman used Vance's general plan, but
 25 Vance didn't get paid for it.

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1 Is that right?
 2 A Yes.
 3 Q When you say Beltman used Vance's general
 4 plan, were there parts of Vance's plan he did not
 5 use?
 6 A Yes.
 7 Q What parts?
 8 A As far as -- Vance's plan was basic
 9 freestall barn. But the layout of the manure system
 10 was different.
 11 Q How was Vance's plan different from
 12 Beltman's?
 13 MR. DINIUS: Object to the form. You can
 14 answer.
 15 THE WITNESS: The basic was that the barn
 16 is in the same location as the freestalls. But as
 17 far as the manure water from flushing, that was to
 18 be developed.
 19 Q (BY MR. McCURDY) What do you mean "to be
 20 developed"?
 21 A By the person that had put in the flush
 22 system. And the manure equipment.
 23 Q Did you have a contract, a written
 24 contract, with Beltman?
 25 A Yes.

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1 Q Do you have a copy of that?
 2 A Somewhere in my files.
 3 Q Do you think it might be somewhere in this
 4 stack of documents in front of me? I didn't see it,
 5 but it might be in there.
 6 A No.
 7 Q Were you asked to look for that?
 8 A No.
 9 Q As best you can recall, Beltman's
 10 contract -- and we'll get a copy of that. So I'm
 11 just looking for your best recollection.
 12 What was he to provide to you? What was
 13 he to do?
 14 A He was to build freestalls.
 15 Q And that is all?
 16 A And also the milking barn. But he subbed
 17 those parts out that he was not an expertise at.
 18 Q Were they truly subcontracts in that he
 19 made arrangements for them and paid them?
 20 A Yes.
 21 Q So you didn't contract with any of those
 22 vendors; is that right?
 23 A No.
 24 Q To your recollection, how did Standley
 25 become involved?

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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

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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

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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

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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?

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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.

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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

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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.

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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?

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- 1 A About three-and-a-half million.
- 2 Q So in exchange for that, at least one of
- 3 the things he was supposed to do, from your
- 4 perspective, was give you a dairy -- provide you a
- 5 dairy that works. Correct?
- 6 A Correct.
- 7 Q And from what I understand from your
- 8 complaint, and the documents I have received, that
- 9 has not happened. Correct?
- 10 A Correct.
- 11 Q And you believe he did some things
- 12 incorrectly. True?
- 13 A Basically he built the dairy and he hired
- 14 Standley & Company to put in the manure handling
- 15 system; flush system. But then through the project
- 16 they left.
- 17 Q Who left?
- 18 A Standley.
- 19 Q They just left?
- 20 A They still sold me the equipment, but I
- 21 had to -- Beltman had to hire another person to
- 22 finish the project.
- 23 Q And who was that?
- 24 A That was Dean Morrison.
- 25 Q Does your dairy work today the way you

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- 1 think it should?
- 2 A No.
- 3 Q Do you have any separate lawsuit pending
- 4 against Mr. Beltman?
- 5 A No.
- 6 Q Do you plan on bringing him into this
- 7 lawsuit?
- 8 A I do not know.
- 9 Q Do you have any sort of arbitration
- 10 proceeding going with Mr. Beltman under your
- 11 contract? Anything like that?
- 12 A No.
- 13 Q Why do you think Houle somehow is more
- 14 responsible for your problems than Mr. Beltman, who
- 15 is in charge of the whole project?
- 16 A Well, the Houle equipment. The pumps.
- 17 And then there were some roller presses.
- 18 Q What about them?
- 19 A They were working as long as the belts
- 20 weren't -- as long as the belts were working on the
- 21 conveyors to carry the manure away.
- 22 Q I'm sorry, say that again.
- 23 A In this whole plan there was conveyor
- 24 belts. And these roller presses would drop the
- 25 manure that the water pressed out onto the roller

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- 1 belt. And then this roller belt would run it to a
- 2 stacker. But the belts had to run at such a speed
- 3 that the belts were becoming frayed and broken. And
- 4 during this whole process Spudnik in Caldwell
- 5 said -- they figured on us at least once a month to
- 6 get our belt fixed, or replaced, or relaced.
- 7 Q When you say roller presses, is that the
- 8 same as separators?
- 9 A No.
- 10 Q From your perspective how are they
- 11 different?
- 12 A They are different because they do not
- 13 separate the manure. They are used to take the
- 14 water out of the manure.
- 15 Q Have you been to Greg Troost's place?
- 16 A I have been there I think once or twice.
- 17 I think I have been there once.
- 18 Q And he uses sand; correct?
- 19 A I do not know what he uses.
- 20 MR. DINIUS: Are we at a breaking point?
- 21 MR. McCURDY: Okay.
- 22 (Recess taken.)
- 23 Q (BY MR. McCURDY) Mr. DeGroot, before the
- 24 break we had a discussion about various things. And
- 25 earlier I had been talking about the steps you went

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- 1 through to get the design in place for your dairy.
- 2 And we had talked about your obtaining some
- 3 materials from 5-G and decided that that wasn't
- 4 working. That wouldn't work. And then you talked
- 5 to Marion Vance and you got materials from him. And
- 6 then you decided to go with Beltman.
- 7 A Well, I also had ISOM out of Caldwell.
- 8 Q My next question is whether or not there
- 9 is anyone else you consulted with during that
- 10 process?
- 11 A Yes.
- 12 Q And who did you work with there?
- 13 A John Roth.
- 14 Q Can you tell me what, if anything, you
- 15 obtained from them by way of written materials?
- 16 A It was basically bids.
- 17 Q Did you get any designs?
- 18 A We used the same general concept.
- 19 Q The one you got from Vance?
- 20 A Correct.
- 21 Q Now, when you say -- let me back up. When
- 22 you spoke with ISOM was Beltman involved yet? Or
- 23 were you still talking to various people?
- 24 A These were separate bids. And then the
- 25 person who you feel most comfortable with, you go

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1 didn't feel comfortable with that.

2 Q You went back to him to talk about his
3 bid and --

4 A Well, he said we can do it for, you know,
5 a certain amount less. And I felt possibly they
6 would cut some corners by doing that. I don't know.
7 But I didn't feel comfortable with that.

8 Q You were concerned about what he might do
9 to lower the price?

10 A Very possible.

11 Q As part of ISOM's bid was he going to sub
12 out the types of work that Standley and Houle ended
13 up doing for Beltman?

14 A Yes.

15 Q Do you recall to whom those contracts were
16 to go?

17 A He has Standley do the manure equipment.
18 And he is with -- what is the fellow? He is right
19 here in Nampa. John. He's on the boulevard on this
20 side of the sugar beet plant. It will come to me.

21 Q Didn't you just buy a pump from them?

22 A From?

23 Q The place you are talking about? I
24 thought I had heard very recently you bought a pump
25 from them. The location you're just trying to

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1 you were at the trade show?

2 A There was Houle equipment there.

3 Q Before you went to the trade show did you
4 know that Houle was going to be used?

5 A I do not know.

6 Q What I'm trying to find out is whether or
7 not you were at the trade show and made the decision
8 to use Houle? Or if you knew before then? Or if
9 Standley made the decision? I'm just trying to get
10 a handle on that.

11 A Well, when you are at a trade show, and
12 you are displaying certain equipment, you don't use
13 other equipment. In other words, you use the
14 equipment that you are at the trade show with.

15 Q Kurt is down there thinking, "McCurdy,
16 don't waste my time on this." But I need to for my
17 own purposes.

18 Was it a Standley display you saw at the
19 trade show?

20 A It was his area that he rented. However
21 they do it.

22 Q Standley?

23 A Yes.

24 Q So at the trade show that is where you saw
25 Houle equipment?

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1 remember.

2 A What kind of pump?

3 Q I don't know. I just heard that. I guess
4 I was wrong. Sorry for the digression. So you did
5 not accept ISOM's bid. And you went with Beltman's
6 bid. And we talked about that.

7 When did you learn that Beltman was going
8 to use Standley as a subcontractor?

9 A When we basically agreed that he would --
10 when he got the bid.

11 Q Did you voice any objections to Standley
12 being involved?

13 A I had no problem then.

14 Q Had you worked with Standley before this
15 project?

16 A No, I have not.

17 Q When did you first learn that Houle was
18 going to be involved?

19 A When I was at the Tulare farm show.

20 Q And while you were there how did it come
21 about that you learned Houle was going to be
22 involved in your new farm?

23 A Because that is the equipment that
24 Standley put in his projects.

25 Q How was it you learned about that while

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1 A Correct.

2 Q Okay. I gotcha. While you were at the
3 trade show do you recall speaking with anyone that
4 you knew to be from Houle rather than Standley?

5 A I recall speaking with Standley.

6 Q Kurt?

7 A Kurt, yes.

8 Q Is Kurt the only one that you recall
9 speaking with at the trade show?

10 A There might have been another Houle rep
11 that I don't recall. But Kurt is the one I remember
12 speaking with.

13 Q When you refer to Kurt as a Houle rep, how
14 do you mean that? I mean, did you believe him to be
15 an employee of Houle? Did you believe him to have
16 some sort of agreement with Houle? Why did you
17 refer to him as a Houle rep?

18 A I didn't refer to him as a Houle rep. He
19 used Houle equipment in his installations.

20 Q At any time before installation started of
21 the Houle equipment did you object to the use of
22 that equipment?

23 A No.

24 Q So you have selected Beltman. And he is
25 your general contractor. Correct?

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1 process were any design changes required by the
2 department?

3 A No.

4 Q How long did it take you to go through
5 that process?

6 A It didn't happen overnight. Let's put it
7 that way.

8 Q Somehow I'm not surprised by that. I know
9 that you wanted to get your dairy in Idaho going --
10 operating as soon as possible.

11 Did the application process slow you down
12 in that?

13 A You mean with the conditional use permit?

14 Q No. Through the Department of
15 Agriculture?

16 A No.

17 Q So whatever time it took with the
18 Department of Agriculture, that wasn't a particular
19 problem to you in getting your dairy up and going?
20 Is that accurate?

21 A That's accurate.

22 Q Do you recall when construction actually
23 started? When Beltman actually broke ground, for
24 lack of a better term?

25 A It was in June of '99. I want to say a

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1 A The spring of 2000.

2 Q Was April then pretty close to your target
3 time?

4 A April was fairly doable.

5 Q If it had been done would you have been
6 able to move in in March?

7 A Yes. I mean, if it is finished, you move.

8 Q I guess what I'm trying to understand.

9 Well, let me ask it this way. This, of course, is a
10 stupid question.

11 If a miracle had occurred and he had
12 finished in October, would you have been able to
13 move your herd on? Was there things set up in
14 Washington so you could do that?

15 A If the place here was ready to be moved
16 on, yes.

17 MR. DINIUS: If a miracle had occurred.

18 MR. McCURDY: Right.

19 THE WITNESS: If a miracle had occurred,
20 yeah.

21 Q (BY MR. McCURDY) And that is an awkward
22 way to find out if everything else was ready to go.
23 And it sounds like it was. You were ready to have
24 this happen.

25 A Um-hmm.

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1 date, but it is right around the middle of the
2 month.

3 Q As part of your agreement with Beltman was
4 there a proposed construction schedule that the two
5 of you had agreed upon?

6 A As far as getting it finished?

7 Q Correct.

8 A You have to deal with weather here in
9 Idaho. And if the weather is bad they cannot
10 accomplish it as fast.

11 Q I understand that. Many times
12 construction contracts have allowances for that. A
13 certain number of bad weather days and all of that.
14 But what I'm asking is whether or not you at least
15 had a target date?

16 A Ultimately it was when they were finished
17 building or when it was close to completion that I
18 could move cows on.

19 Q As soon as possible?

20 A Yes.

21 Q From June '99, based upon your
22 arrangements on your old place, and moving your
23 herd, and this, that, and the other thing, when was
24 the soonest you would have been able to go into
25 operation, assuming the building had been done?

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1 Q So had Beltman in his contract been given
2 any penalty provisions for going past a certain
3 date?

4 A No.

5 Q Had Beltman in his agreement been given
6 any incentive to finish early? Before some date?

7 A No.

8 Q Had consideration been given to either one
9 of those clauses?

10 A No.

11 Q Once construction started in June of '99
12 where were you living?

13 A In Washington.

14 Q How often would you come down to Idaho?

15 A At least twice a month. Sometimes more.

16 Q When you would communicate with Beltman
17 when you weren't here did you use e-mail, ever?

18 A No.

19 Q Did you ever write letters?

20 A No.

21 Q Was it always telephone?

22 A Yes.

23 Q When you would call him would you have
24 done it from a phone for which there would be
25 records currently available?

1 with what is happening with Houle. So that is
2 generally where we need to go today for a while.

3 So I guess the first place to start would
4 be once your dairy went into operation, and, say,
5 after the first couple of weeks, what problems, if
6 any, did you see developing with the Houle
7 equipment?

8 A The way it was set up there was two slope
9 screens. And those were Houle's. And they ran into
10 presses. And then these two presses ran onto a
11 conveyor belt. And then that conveyor belt took the
12 manure that had the water pressed out of it and
13 dumped that into a stacker. And Ernest can say
14 exactly when he was called back there. But the belt
15 that the manure dropped onto had to be run a certain
16 speed. And then it ran into a, like I say, a
17 stacker hopper. And then that brought the manure up
18 to about a 25-foot height and dropped it on a slab.
19 In design it worked. But in practicality it didn't.
20 Because the belt had lacing on it where it was put
21 together. And where that belt would come around it
22 would catch on the sides and fray. And ultimately
23 it wouldn't work anymore after it split apart. The
24 belt cannot continue to go around, because it is not
25 able to. So then what happened is the two-roller

1 presses continued piling up manure. And we had
2 manure piled high. And we had to dig that out.
3 Like I said, Ernest spent more time digging manure
4 than he did managing the dairy.

5 Q We'll have to ask Ernest when it was that
6 he was called back.

7 The dairy had been in operation for some
8 period of time before this happened?

9 A This happened within the first week.

10 Q At the time you started the operation did
11 you have any written maintenance requirements posted
12 for your employees to see? What they had to do at
13 certain times to keep the equipment going?

14 A No.

15 Q And why is that?

16 A A lot of them do not read English.

17 Q What were they told and by whom were they
18 told how to maintain the equipment on a regular
19 basis?

20 A Well, the equipment barely even got to run
21 before we could maintain it. It was broke before --
22 like I say, in that first week.

23 Q Okay. But before the equipment was turned
24 on what were your employees told about what they
25 were to told to do to maintain it?

1 A Well, we knew we had to grease zerks and
2 that type of thing.

3 Q And who told them what to do?

4 A We were not told by anyone specifically.
5 We were told after it was broken that it had to be
6 maintained.

7 Q When your employees started using the
8 equipment, what did you or Ernest tell them about
9 what they had to do to maintain it?

10 A Well, there were certain zerks that had to
11 be greased on a routine basis.

12 Q Did you tell them that?

13 A No, I did not.

14 Q Did Ernest tell them that?

15 A Ernest would have to answer that.

16 Q So you don't know what, if anything --

17 A I do not, no.

18 Q Okay. Skipping beyond when the dairy
19 first went into operation.

20 What instructions at any time have you
21 given to any of your employees about the maintenance
22 issues?

23 A That we have to do regular maintenance on
24 them. And that is on any dairy or business if you
25 have machinery. You've got to change oil on

1 tractors. Grease fittings. And if you don't they
2 break and then you have to replace them.

3 Q Who did you tell to do that?

4 A Who did I tell to do that?

5 Q Right.

6 A In that first period of time I still
7 lived in Washington. We did not move down here
8 until September of that year. And the dairy
9 started operating in April. So I was not around
10 the dairy -- maybe a third of the time I was around
11 there.

12 Q During the time you were around who did
13 you tell to do regular maintenance?

14 A I told, like I say -- that's a tough
15 question. Because I don't know if I did or not.

16 Q Have you talked with Ernest about whom he
17 spoke to about regular maintenance?

18 A No, I haven't.

19 Q You told me somewhere in your barn you
20 have a calendar that references certain activities
21 dealing with, I gather, the care of the herd, and
22 that sort of thing.

23 Do you have any sort of equipment books or
24 checklists that give your employees or anyone else
25 regular time frames within which they are supposed

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- 1 work on it, then it develops. But if people don't
2 work on it, it doesn't develop. I mean, if you
3 don't work at something it doesn't get done.
- 4 Q And my question was whether or not when
5 according to you they stopped working on it had it
6 been any developed?
- 7 A No.
- 8 Q So it wasn't finished?
- 9 A Correct.
- 10 Q As you sit here today you don't remember
11 whether you told them to quit work or they told you
12 they were going to quit work. They just weren't
13 there anymore.
- 14 Is that right?
- 15 MR. DINIUS: Object to the form.
16 Mischaracterizes his testimony.
- 17 THE WITNESS: All I remember is they had
18 to hire another person to finish digging the
19 trenches. To finish connecting everything together.
20 Digging the pipes so the project could work.
- 21 Q (BY MR. McCURDY) Is that the last time
22 you remember anyone from Standley being on the
23 project when they had to hire somebody else to
24 finish the trenches?
- 25 A They were called in when the Houle pumps

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- 1 were broken and so on. And also on some of the
2 roller presses.
- 3 Q I see. So at one point, according to you,
4 they left. But then later on they reappeared?
- 5 A It is because I called them. Because who
6 else can I call?
- 7 Q Well, in fact, you have had other people
8 work on that project; haven't you?
- 9 A I have had other people, yes.
- 10 Q So there were other people to call.
11 Correct?
- 12 A Not on that equipment.
- 13 Q There were other people to call about your
14 problems, though; correct?
- 15 MR. DINIUS: Object to the form.
- 16 THE WITNESS: Could you rephrase that
17 question?
- 18 MR. McCURDY: We'll go to a different
19 topic.
- 20 Q (BY MR. McCURDY) Who were some of the
21 other people that have worked on your dairy?
- 22 A As far as?
- 23 Q The systems we have been talking about.
24 The ones Standley and Houle had some involvement in.
- 25 A I have Tom Storm from Dairy Services.

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- 1 Q Who else?
- 2 A I had Jim Etherington. It used to be EEC.
3 I don't know what the new name of it is.
- 4 Q What does he do?
- 5 A He sold me a fan separator.
- 6 Q Who else have you had work on it?
- 7 A I can't recall any other persons. Those
8 are the main people.
- 9 Q Okay. I'm handing you what has been
10 marked as Deposition Exhibit No. 2, Mr. DeGroot.
11 That is the cover sheet for the production responses
12 we received yesterday. And I also have in front of
13 you copies of the documents that were attached to
14 that. So technically all of those materials are
15 Exhibit 2.
- 16 MR. McCURDY: And, Kevin, let me ask you
17 this. What I would like to do is consider this
18 whole packet Exhibit 2. Since Bates numbers are on
19 all the subexhibits, just reference those pages by
20 Bates number, rather than have them marked as
21 separate exhibits.
- 22 Is that acceptable to you?
- 23 MR. DINIUS: That's fine.
- 24 MR. McCURDY: It seemed to be kind of the
25 simplest way to do all of that.

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- 1 Let's go off the record a second.
2 (Discussion held off the record.)
- 3 Q (BY MR. McCURDY) Earlier what I
4 referenced as Exhibit 2 --
- 5 MR. DINIUS: I apologize for interrupting.
6 I thought we were on the record. Chuck clarified
7 his ear tag testimony this morning. Were we not on
8 the record? He probably needs to clarify it before
9 we move on.
- 10 THE WITNESS: What was mentioned
11 previously as far as if we had any cow numbers.
12 Cows or animals that are identified from the time
13 they are born. And it is pretty detailed. Some
14 places more than mine. But there are records of
15 individual cows.
- 16 MR. McCURDY: Okay.
- 17 Q (BY MR. McCURDY) When I was referencing
18 Exhibit 2 to your deposition, that document is the
19 first set of interrogatory answers and responses to
20 request for production you received from us. So I
21 had that marked just to kind of track that. So that
22 is Exhibit 2.
- 23 What I need now is this marked Exhibit 3.
24 (Exhibit 3 marked.)
- 25 Q (BY MR. McCURDY) I'm handing you what is

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- 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

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- 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

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- 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,

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- 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

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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.

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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.

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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-feet 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

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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;

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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 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.

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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
0 it would work for the period of time you were at the
1 dairy in April of 2000?

2 A From the initial startup it did work.

3 Q And then you left town and you don't know
4 when the problems first started, do you? That is
5 why you're referring me to Ernest?

6 A Like I say, Ernest was there the whole
7 time. And I will let him make his statements. I
8 can't put words in his mouth.

9 Q And I'm not looking for that from you.
0 Don't get me wrong. All I can ask you is what you
1 know. And that is why I'm trying to focus these
2 questions on you. And by "you" I mean you
3 personally. Chuck DeGroot. And I want to capsulize
4 what I think you just told me. You tell me if I'm
5 right or wrong. Is it correct that on April 20,

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

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- 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

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- 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

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- 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 Houle
 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

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- 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

1 level of your lagoon affected the operation of the
2 manure handling system?

3 MR. DINIUS: Are you asking him his
4 understanding? Or are you asking him what Standley
5 & Company had told him?

6 MR. LEWIS: I didn't ask him that. I just
7 want to know what his understanding was as to the
8 importance of the level of the lagoon. If he had
9 one.

10 THE WITNESS: I had a lot of things to
11 think about. And at that time I didn't think it was
12 important. But in retrospect it was very important.

13 Q (BY MR. LEWIS) Had you and Kurt Standley
14 discussed the importance of the level of the lagoon
15 height before July 25, 2000 when he sent you this
16 letter?

17 A It may have been mentioned.

18 Q What is your understanding as you sit here
19 today as to the importance of the level of the
20 lagoon height in the operation of the manure
21 handling system?

22 A The higher the level the less lift.

23 Q What does that mean?

24 A Well, when you have a low level there is
25 more friction loss to raise the water to a certain

1 of freeboard. And that is my capacity. Whereas, if
2 I kept it at a lower level, then the amount of
3 water -- then I have less water to pump in the fall.

4 Q Why do you have less water in the fall?

5 A It depends on how much water you put into
6 your lagoon.

7 Q Did you just have a limited supply of
8 water that could feed that lagoon?

9 A No, I did not.

10 Q So you could have kept it at whatever
11 level you wanted to if you had so desired?

12 A I could have kept it at a higher level.
13 But only at the risk of not being able to hold it.

14 Q Explain that for me.

15 A If I pump that thing up to 25 feet, and
16 that is my top level, that is all it will hold.

17 Q And then what would happen to it?

18 A Then excess water that goes in over that
19 25 feet will spill out and go on down the road.

20 Q And in July of 2000 what was your
21 understanding as to the proper lagoon level height
22 to operate the manure handling system?

23 MR. DINIUS: I'll object to the form.

24 Q (BY MR. LEWIS) Just your understanding.
25 That is all I can ask for. Did you have an

1 level. But when the water level is at, say, 20
2 feet, there is less friction than when it is at 10
3 feet. It takes a certain amount of power to raise
4 it that 10 feet. There is friction loss.

5 Q So if you have a higher lagoon level, then
6 it takes less power to pump the volume of water up
7 than if it was a lower lagoon level?

8 A Yes.

9 Q Was it important to keep the lagoon level
10 at a certain height for a proper operation in your
11 manure handling system?

12 A You need to keep it at a certain height.
13 But like I said previously, I could not fill that
14 lagoon up to that level. Because then by the time
15 fall came I would have been running out. And then
16 you get the Department of Ecology on you. That is
17 what they call it in Washington.

18 Q Explain to me what you mean when you say
19 you could not keep it at a certain level or by fall
20 you would have been running out.

21 What do you mean?

22 A What I meant by that is, if I had brought
23 my lagoon level up to, say, 20 feet. From the 20
24 feet level to the top -- from the 20-foot level to
25 the top of my lagoon gives me only four to five feet

1 understanding as to what the proper level should
2 have been?

3 A The proper level for that to operate
4 should have been higher. I agree.

5 Q Do you know the number?

6 A No.

7 Q Ten feet? Twenty feet?

8 A No.

9 Q But you do admit it should have been
10 higher than the level you kept it at in July of
11 2000?

12 A If I had kept it higher I would have had
13 problems come fall. That is what I'm saying.

14 Q I understand that.

15 A Because it is called management. If you
16 don't manage it properly -- I could have filled my
17 lagoon up to the top. But then I would have had no
18 room for waste water to go, because I'm full.

19 Q So you were managing the level of the
20 water in the lagoon; correct?

21 A Correct.

22 Q Did you voice your concerns with
23 Mr. Standley after you received this letter July 25,
24 2000 with regard to his criticism of the level of
25 the lagoon that you were keeping the water at?

REPORTER'S CERTIFICATE

I, MONICA M. ARCHULETA, CSR NO. 471, 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 true and correct record 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 party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 30th day of OCTOBER, 2002.



A handwritten signature in black ink, appearing to be "M. Archuleta", written over a horizontal line.

MONICA M. ARCHULETA, CSR NO. 471

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires: August 3, 2006

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

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1 Q. So after that initial visit Mr. Grigg and
2 the belt backed up and broke again, did you call him
3 back, or did you just go right to Spudnik? How did
4 you handle that? Again, this is after his initial
5 callback.

6 A. Well, Spudnik was the one where we could get
7 the belts locally, and that's where we went to
8 get --

9 Q. Did Mr. Grigg get called back again or
10 anyone from Standley get called back?

11 A. It's possible that they did over the next
12 period of time, yes.

13 Q. When you say, "over the next period of
14 time," what time frame roughly are you talking about?

15 A. The next six to eight months.

16 Q. And how many times would you have called
17 them back in that time frame?

18 A. That's difficult. I cannot answer that
19 question.

20 Q. Can you estimate it more than two?

21 A. Probably two at least two, yes.

22 Q. More than ten?

23 A. Probably not.

24 Q. More than five?

25 A. You want a ballpark figure?

1 any of the projects?

2 A. I think it was during the winter and
3 everything was frozen over.

4 Q. So the winter of --

5 A. That would be the winter of 2000.

6 Q. 2000 to 2001?

7 A. Yes.

8 Q. But it wasn't until June of 2001 when you
9 actually disputed paying any of the service calls
10 that --

11 A. I don't remember the exact time frame, but
12 that's when I said, "This is enough."

13 Q. At some point in time, did you have --

14 during these various service calls that Standley was
15 making, did you have conversations with Mr. Grigg, or
16 anybody else from Standley, about what was going on
17 at the facility? Why, from your perspective, the
18 system wasn't working?

19 A. I can't answer that specifically, but I do
20 know Ernest said to me that prior to the startup he
21 asked Jeff, "How will this work?"

22 And he said, "You won't have to worry --
23 you won't have to come back here, because it will
24 work."

25 Q. This was Mr. Grigg telling this to Ernest?

1 Q. Yeah. Somewhere around five to ten?

2 A. Yeah, two to ten. Like I say, I was not
3 there all of the time, either.

4 Q. As far as those two to ten times within that
5 six- to eight-month time frame that they got called
6 back, did Standley ever refuse to come out and
7 attempt to help you with the system?

8 A. Not to my recollection.

9 Q. Do you recall whether the service calls that
10 Standley made in that six to eight month time
11 frame -- do you know if that was part of the bid
12 that they had submitted to Mr. Beltman, or were they
13 service calls that you got charged for?

14 A. They were service calls that I was charged
15 for.

16 Q. And at any point in time, did you dispute
17 the fact that they were charging you for these
18 service calls?

19 A. Yes.

20 Q. What time frame was that?

21 A. That was prior to June of 2001.

22 Q. June of when?

23 A. 2001.

24 Q. When was the last time that Standley was
25 actually out on your facility attempting to remedy

1 A. Yes.

2 Q. Did anyone from Standley advise you or, if
3 you know, did they advise Ernest that some of the
4 components of the manure-handling system needed
5 maintenance at any point in time?

6 A. Yes.

7 Q. Were you advised of that, or do you know if
8 Ernest was advised of that?

9 A. Probably both of us, yes.

10 Q. And what do you recall being advised as far
11 as greasing, that type of thing? In regard to the
12 greasing aspect of it, did you have a maintenance
13 schedule that you grease these components of the
14 equipment?

15 A. It was difficult to maintain something if
16 it's not running properly.

17 Q. At any point in time during that initial
18 six- or eight-month time frame, did the system work
19 at all?

20 A. It did work.

21 Q. Did the system actually ever, in fact,
22 produce any compost that you could use as bedding in
23 the stalls?

24 A. Yes, it did.

25 Q. Did you ever utilize any of that bedding?

EXHIBIT
“B”

STANDLEY & Co.
 PO BOX 14
 TWIN FALLS, ID 83303-0014

Statement

Statement Date:
 Aug 28, 2001

Customer Account ID:
 DEGRO

Voice: 208-732-6131
 Fax: 208-732-6184

DEGRO
 AUG 29 2001

Account Of: DEGROOT DAIRY
 603 Massachusetts Ct.
 Nampa, ID 83686

Amount Enclosed
 \$ _____

Date	Due Date	Reference	Paid	Description	Amount	Balance
0/20/00	10/30/00	193	Part		2,446.76	2,446.76
0/24/00	11/3/00	181			319.98	2,766.74
0/31/00	11/10/00	192			1,987.70	4,754.44
1/22/00	12/2/00	203			350.00	5,104.44
1/22/00	12/2/00	204			3,957.72	9,062.16
2/4/00	12/14/00	209			315.00	9,377.16
2/4/00	12/14/00	210			420.00	9,797.16
2/4/00	12/14/00	211			315.20	10,112.36
2/4/00	12/14/00	212			529.20	10,641.56
2/21/00	12/31/00	234			255.00	10,896.56
2/21/00	12/31/00	235			113.93	11,010.49
2/26/00	1/5/01	236			351.25	11,361.74
/25/01	2/4/01	258			1,725.10	13,086.84
/6/01	2/16/01	265			37.50	13,124.34
/9/01	2/19/01	266			4,538.28	17,662.62
/16/01	3/26/01	306			2,091.95	19,754.57
/6/01	4/16/01	324			505.00	20,259.57
Total						20,259.57

0-30	31-60	61-90	Over 90 days
0.00	0.00	0.00	20,259.57

EXHIBIT
“C”

STANDLEY & Co.
 PO BOX 14
 TWIN FALLS, ID 83303-0014

Statement

Statement Date:
 May 31, 2001

Customer ID:
 DEGRO

Voice: 208-732-6131
 Fax: 208-732-6184

Account Of:
 DEGROOT DAIRY
 603 Massachusetts Ct.
 Nampa, ID 83686

Amount Enclosed

\$ _____

Date	Date Due	Reference	Paid	Description	Amount	Balance
10/20/00	10/30/00	193	Part		2,446.76	2,446.76
10/24/00	11/3/00	181			319.98	2,766.74
10/31/00	11/10/00	192			1,987.70	4,754.44
11/22/00	12/2/00	203			350.00	5,104.44
11/22/00	12/2/00	204			3,957.72	9,062.16
12/4/00	12/14/00	209			315.00	9,377.16
12/4/00	12/14/00	210			420.00	9,797.16
12/4/00	12/14/00	211			315.20	10,112.36
12/4/00	12/14/00	212			529.20	10,641.56
12/21/00	12/31/00	234			255.00	10,896.56
12/21/00	12/31/00	235			113.93	11,010.49
12/26/00	1/5/01	236			351.25	11,361.74
1/25/01	2/4/01	258			1,725.10	13,086.84
2/6/01	2/16/01	265			37.50	13,124.34
2/9/01	2/19/01	266			4,538.28	17,662.62
3/16/01	3/26/01	306			2,091.95	19,754.57
4/6/01	4/16/01	324			505.00	20,259.57
TOTAL						20,259.57

0-30	31-60	61-90	Over 90 days
0.00	505.00	2,091.95	17,662.62

EXHIBIT
“D”

STANDLEY & Co.
 PO BOX 14
 TWIN FALLS, ID 83303-0014

Statement

Statement Date:
 Jun 12, 2001

Customer ID:
 DEGRO

208-732-6131
 208-732-6184

Account Of:
 DEGROOT DAIRY
 603 Massachusetts Ct.
 Nampa, ID 83686

Amount Enclosed

\$

Date	Date Due	Reference	Paid	Description	Amount	Balance
10/20/00	10/30/00	193	Part		2,446.76	2,446.76
10/24/00	11/3/00	181			319.98	2,766.74
10/31/00	11/10/00	192			1,987.70	4,754.44
11/22/00	12/2/00	203			350.00	5,104.44
11/22/00	12/2/00	204			3,957.72	9,062.16
12/4/00	12/14/00	209			315.00	9,377.16
12/4/00	12/14/00	210			420.00	9,797.16
12/4/00	12/14/00	211			315.20	10,112.36
12/4/00	12/14/00	212			529.20	10,641.56
12/21/00	12/31/00	234			255.00	10,896.56
12/21/00	12/31/00	235			113.93	11,010.49
12/26/00	1/5/01	236			351.25	11,361.74
1/25/01	2/4/01	258			1,725.10	13,086.84
2/6/01	2/16/01	265			37.50	13,124.34
2/9/01	2/19/01	266			4,538.28	17,662.62
3/16/01	3/26/01	306			2,091.95	19,754.57
4/6/01	4/16/01	324			505.00	20,259.57
TOTAL						20,259.57

0-30	31-60	61-90	Over 90 days
0.00	0.00	2,596.95	17,662.62

EXHIBIT
“E”

Bid : Stan Beltman
De Groot Dairy

PVC Pipe :

Drains :	1500'	18"	100*	PIP.
	3	90°	100*	PIP.
	11	T's	100*	PIP.

Flush :	2800'	12"	125*	PIP
	16	90°	125*	PIP
	16	T's	125*	PIP
	1500	15"	125*	PI
	1	90°	125*	PI
	1	7	125	PI

Delete	}	Fresh Water :	3200'	4"	Sch 40
			3000	2"	Sch. 40
			<u>250</u>	1"	Sch 40
			<u>6450</u>		\$ 13,900

These materials... will be delivered to job site and will included all glue. Air pipe and electrical conduit will be bid with machine equipment

19 2

This price doesn't include any small parts items that will be necessary to make all the connections. They will be billed on cost plus 15% basis.

Price: \$59,600

Mannur Equipment

Slope Screens	2
Roller Press	1
4" Agi. Pumps	2
8" Floating Flush Pump	2
Lane Valves	14
Air Valves	7
Controllers	3
Air - electrical solenoids	21
Air line 3000'	1
Electrical conduit 2000'	1
Dry fiber stacker	1

1" Poly Air... pipe	3000'	1
Air line conduit	1000'	1

This price includes all shipping and installation. Motors will be extra, at time of installation. P.U.C. pipe for plumbing in and around reception pits and main equipment will be an extra at time of installation. As will construction work to place

Price \$ 119,575

Kurt Stodd

EXHIBIT
“F”

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, STANDLEY)

TRENCHING, INC., d/b/a)

STANDLEY & CO., and J. HOULE)

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

Defendant.)

STANDLEY TRENCHING, INC.,)

d/b/a STANDLEY & CO.,)

Counterclaimant,)

vs.)

CHARLES DeGROOT, and DeGROOT)

FARMS, LLC,)

Counterdefendants.)

COPY

Case No. CV 2001-777.

DEPOSITION OF:

ERNEST DeGROOT

November 12, 2003

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR, Notary Public

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1 except feed the dry cows once a day.
2 Q. Was your dad on location at the 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 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 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.
0 Q. What was that?
1 A. Hiring employees, milkers.
2 Q. What other equipment was new that you had to
3 be trained on?
4 A. Our loader, our CAT loader.
5 Q. Who trained you on that?
6 A. That was Western States.
7 Q. What about on the manure handling system; was
8 that all new equipment?
9 A. Yes.
0 Q. Earlier you said that in those last three or
1 four days the manure system was not ready, that it still
2 needed to be -- there were power issues and they were
3 still hooking up some of the pipes at one point in time.
4 Was the manure handling system operational?
5 A. I believe they had it running a day or two

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 A. Yes.
2 Q. Was your dad still present on the dairy on the
3 day that you discovered the manure handling stacker not
4 working?
5 A. That was after we had started milking, the
6 second or third day. After the first day of milking he
7 had gone back to Washington to help finish loading up
8 the rest of the cows; so, no, he wasn't around on that
9 day.
10 Q. So when your dad left to go back up to
11 Washington, were you the man in charge of the dairy?
12 A. Yeah.
13 Q. When did your dad move permanently to Idaho?
14 A. It was the end of the summer, 2000.
15 Q. Do you remember what month? August?
16 September?
17 A. I think it was August. August or September.
18 Q. During the time that your dad was not there,
19 what were your responsibilities?
20 A. Run the dairy.
21 Q. Did you talk with him on the phone during that
22 time period?
23 A. Yeah.
24 Q. Did you consult with him about the manure
25 handling system?

1 about the problems with the manure handling system. My
2 question is: What specific problems related to the
3 manure handling system did you talk to your dad about?
4 A. The stackers -- the stacker, conveyor belts
5 backing up, conveyor belts going off track, rollers
6 getting jammed up, stopped working, alleys getting ugly,
7 getting messy, pipes getting plugged up, just whatever.
8 Q. You said that you asked your dad who you
9 should be calling to address these problems; is that
10 correct?
11 A. Yeah.
12 Q. Who did your dad recommend that you call?
13 A. He said I better get ahold of Standley.
14 Q. And by that, are you talking about Standley &
15 Company, the company?
16 A. Yeah.
17 Q. Did you have a specific contact person with
18 Standley?
19 A. Yeah.
20 Q. Who was that?
21 A. Jeff Griggs.
22 Q. Can you describe for me your understanding of
23 how the manure handling system was supposed to work?
24 And if it's helpful to show us on the blueprint, that
25 would be great. Otherwise, if it's easier to just draw

1 A. Yeah.
2 Q. What, specifically, did you consult with him
3 about related to the manure handling system?
4 A. I called him up and asked him who I should get
5 ahold of specifically. And he had asked me why. I
6 said, well, something is not right.
7 Q. Did you explain that the stacker had backed up
8 or was plugged up?
9 A. That wasn't the first time. There was other
10 times after that I called him.
11 Q. The other times that you called him related to
12 the manure handling system, what were the problems?
13 MS. FISCHER: I'm going to make a quick
14 objection. It's a little vague as to what time period
15 we are talking. Are we just going to go in
16 chronological order?
17 MR. DOUGHERTY: I'm talking about during
18 the -- maybe three months, it looks like, that he was up
19 in Washington and Ernest was running the Idaho dairy.
20 Q. BY MS. DOUGHERTY: So in that time frame, from
21 the beginning of the manure handling system becoming
22 operational until August of 2000.
23 A. Okay. What was the question again?
24 Q. You said earlier that you called your dad to
25 consult with him and that you had consulted with him

1 a diagram, you can do that. Whatever works best for
2 you.
3 A. How it was supposed to work?
4 Q. Yes. What is your understanding of how the
5 manure handling system was supposed to work.
6 A. Well, what you have is: There was a pump out
7 in the lagoon which pumped water to the alleys and that
8 flushed the alleys down and cleaned them. Then when it
9 got to the end of the alley and hit the pipes, it
10 drained into the pit where the pumps were.
11 Q. And will you show us where you are talking
12 about? Let's start with the lagoon. If you want to
13 just label it, that would be fine.
14 A. (Labeling blueprint.)
15 Q. So the pumps were located in that upper
16 right-hand corner? What is that labeled?
17 A. I put "Pump to Flush Alleys."
18 Q. That is the 5-acre lagoon?
19 A. Yes. That was pumped to the alleys.
20 Q. Were there underground pipes going from that
21 lagoon over to the alleys?
22 A. Yes.
23 Q. Go ahead.
24 A. From there each -- it was on a time clock
25 where it pumped each individual alley, flushed it down

1 to clean out the manure that was 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 was supposed to work, how would that have to be
 2 moved over to start a new stacker?
 3 A. About once a day.
 4 Q. Did anybody on the dairy have the specific
 5 responsibility for going over and moving that stacker?
 6 A. I took care of that.
 7 Q. So on the day that you discovered that the
 8 stacking machine was backed up or plugged up, was that
 9 the one time you would have gone over to the stacker and
 10 moved the wheels?
 11 A. No, it wasn't -- oh, it was, like, first thing
 12 in the morning I went back there, checked everything
 13 out.
 14 Q. I forgot to ask you a question about the flush
 15 system, so I want you to shift your thinking for a
 16 moment.
 17 When you talked about the water being pumped
 18 from the lagoon, was there a requirement that the lagoon
 19 have a certain level of water in it in order for the
 20 pumps to work?
 21 A. I don't know.
 22 Q. Who would be responsible on the dairy for
 23 knowing that kind of information?
 24 A. That has to do with the pumps and the
 25 engineering of it.

1 and keep some of your lagoon.
 2 Q. Did you gain your understanding through
 3 experience, through seeing manure handling systems,
 4 working on other dairies?
 5 A. Yeah, all of that.
 6 Q. Did you ever have any sort of demonstration of
 7 your specific manure handling system provided for you?
 8 A. No.
 9 Q. Do you know how the decision was made to
 10 install this particular manure handling system on the
 11 DeGroot Dairy?
 12 A. My dad, he would go to different trade shows,
 13 talk to different vendors there.
 14 Q. So he saw this manure handling system at a
 15 trade show and made the decision that was the system he
 16 wanted on this dairy?
 17 A. Well, after talking to them and --
 18 Q. Were you involved in that decision making
 19 process?
 20 A. No, I was in college at the time.
 21 Q. Did you happen to attend the trade show or see
 22 the system?
 23 A. No.
 24 Q. So was your first experience with this
 25 specific manure handling system that was installed on

1 Q. Again, how did you gain your understanding of
 2 how the manure handling system and the flush system was
 3 supposed to work?
 4 A. Which? The flush part or the manure handling
 5 part?
 6 Q. Either.
 7 A. The understanding of it was --
 8 Q. Did you gain your understanding of how the
 9 flush system was supposed to work based on your
 10 experience in Washington?
 11 A. Yeah, it's pretty basic. I mean, pump water
 12 down the alleys to clean them.
 13 Q. As far as the level of water in the lagoon,
 14 did you give any thought to how much water needed to be
 15 in there?
 16 A. It was never mentioned.
 17 Q. As far as the manure handling system, how did
 18 you gain your understanding about how that was supposed
 19 to work?
 20 A. The concept of it or the actual --
 21 Q. The concept of what you have just talked about
 22 how the manure handling was supposed to work.
 23 A. Its basic principle, you are trying to
 24 dewater. You are, basically, through different
 25 mechanical means, you are trying to dewater the manure

1 the DeGroot Dairy at the time that it became
 2 operational?
 3 A. Can I correct myself?
 4 Q. Sure.
 5 A. They did have our system -- actually, they had
 6 the components of it at a trade show here prior to us
 7 starting up. The actual pieces they had there, and they
 8 were kind of using it as their display.
 9 Q. So did you see that?
 10 A. Yeah.
 11 Q. So your understanding of the manure handling
 12 system was gained partially from seeing that at that
 13 trade show, right?
 14 A. Yeah, and talking to Kurt Standley who was
 15 there manning the booth and going through and explaining
 16 what was going to happen once it was installed on our
 17 place.
 18 Q. I want you to now shift to how the manure
 19 handling system and the flush system actually worked.
 20 A. Okay.
 21 Q. First of all, what were your interactions with
 22 the Standley personnel during the process of
 23 installation?
 24 A. I only had a little bit of interaction with
 25 them. The times I did come down with my dad, they

1 weren't necessarily always there working once or twice
2 they may have been. And then they were here -- I
3 talked to them a little bit just prior to us starting.
4 And then I talked to them and interacted with them every
5 time they came out and had to fix it.

6 Q. And when you refer to "them," was Jeff Griggs
7 the person?

8 A. Yes.

9 Q. And then was there anybody else who you talked
10 to on a regular basis from Standley?

11 A. There was a couple other guys, but he was the
12 main guy I got ahold of.

13 Q. Okay.

14 A. I had his phone number.

15 Q. Did Standley provide any training on the
16 manure handling system for you?

17 A. No.

18 Q. Did they provide any training for anyone on
19 the DeGroot Dairy on the manure handling system?

20 A. No.

21 Q. Were you informed of any maintenance routines
22 or recommendations with regard to the manure handling
23 system?

24 A. No.

25 Q. Were you provided any manuals or technical

1 it works out pretty good that way.

2 Q. When Jeff was showing you how to set the timer
3 on the flush system, did you ask him any questions about
4 how the manure handling system was supposed to work?

5 A. No, I didn't.

6 Q. You didn't have any discussion with Jeff about
7 its operational status, as far as was it ready to go?

8 A. No.

9 Q. How did you know when the whole system was up
10 and running?

11 A. Well, I would fly back -- between there and
12 going back to see what they were doing. Then they said,
13 "All right, we are going to run it." And I watched it
14 run for a little while. Then he said, "I'll tweak a few
15 things probably."

16 I was up in the barn, where I spent most of my
17 time, between that and running over the rest of the
18 place checking things out. They said, "It's up and
19 running, give us a call if you need anything."

20 Q. So the first problem that you discovered with
21 regard to the manure handling system was that the
22 stacking machine was backed up. Are you using the word
23 "backed up" and "plugged up" interchangeably or are
24 those two different things?

25 A. They are two different things, but they are --

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1 drawings related to the manure handling system?

2 A. No.

3 Q. Did you ask for any of these materials?

4 A. Didn't see anybody around to ask.

5 Q. Do you have manuals for other equipment on the
6 dairy?

7 A. Yeah.

8 Q. What about the automated flush system; were
9 you trained on the use of the automated flush system?

10 A. I was shown how to set the run times for each
11 alley and to program the clock which controlled that.

12 Q. Who showed you that?

13 A. Jeff.

14 Q. How often did you have it set up to flush the
15 alleys?

16 A. I don't remember.

17 Q. Do you know how often it is set up right now?

18 A. I have it set up right now to flush three
19 times a day.

20 Q. Do you think you probably had it set up more
21 or less when you first started?

22 A. Probably about the same. I think that was --

23 Q. Is that a standard?

24 A. You know, it goes along the lines of we,
25 basically, milk three times a day, so that is kind of --

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1 Q. Let's separate them. When it's backed up,
2 what are you referring to?

3 A. What I meant was all the material that was
4 supposed to be carried away by the large stacker was
5 sitting on the lower conveyor belt and not going
6 anywhere. All the material that was coming off and
7 supposed to be running through the hoppers, it was piled
8 up about 6 feet. And the water was backed up in regards
9 to the material that was on the conveyor. And then the
10 hoppers that went to the rollers, it was staying there;
11 it wasn't going anywhere.

12 Q. When you discovered this problem, did you take
13 a look to figure out why that had happened?

14 A. No.

15 Q. You just called Standley?

16 A. Yeah.

17 Q. Did Standley determine what caused the
18 problem?

19 A. I don't remember.

20 Q. But you said that they did get it up and
21 running the same day.

22 A. Yeah.

23 Q. Did you have a reoccurrence of the same
24 problem?

25 A. Yeah.

1 Q. When did that happen again?
 2 A. I can't even -- not too -- within the next
 3 week or two, I'm sure.
 4 Q. How did you respond?
 5 A. Called them up.
 6 Q. And was it corrected?
 7 A. Yes.
 8 Q. Again, did Standley give you any explanation
 9 for the problem?
 10 A. Not that I remember.
 11 Q. Were there any other problems with the manure
 12 handling system?
 13 A. Initially, there in that first period, are we
 14 talking about?
 15 Q. Yes.
 16 A. Didn't feel like I was getting enough water
 17 down my alleys to clean them properly.
 18 Q. So would that be related to the flush system?
 19 A. That would be the flush pump in the system
 20 there.
 21 Q. Why did you have that belief?
 22 A. Because they weren't very clean.
 23 Q. What did you do about that?
 24 A. Called them up, said I didn't think we were
 25 getting enough water down our alleys.

1 Q. During the April to August time frame, can you
 2 approximate about how many times Standley came out to
 3 the dairy to work on problems?
 4 A. I would say at least once a week.
 5 Q. About once a week from April to August
 6 Standley was on site?
 7 A. Yeah, minimal.
 8 Q. Did anyone from Standley ever bring your
 9 attention to any rocks or large particles of gravel or
 10 sand that were clogging up the system?
 11 A. They showed me how to clean out the rock
 12 traps.
 13 Q. Where are the rock traps?
 14 A. They were right behind the -- they were part
 15 of the separator.
 16 Q. So they would have been down in that pit area,
 17 right?
 18 A. No. They were actually part of the separator
 19 itself.
 20 Q. Where is the separator?
 21 A. That was up on the pad, the stacking pad.
 22 Q. So somebody from Standley showed you how to
 23 clean out the rock traps?
 24 A. Yeah.
 25 Q. Who was that that showed you?

1 Q. Did they resolve that?
 2 A. Yeah, they started -- they did some work on
 3 the pumps or something.
 4 Q. When would that have been?
 5 A. It was during that summer some, sometime in
 6 the summer.
 7 Q. So sometime between April and August?
 8 A. August or September. It was warm out, I
 9 remember that much.
 10 Q. Did you say they did get that problem
 11 resolved?
 12 A. No.
 13 Q. How was that addressed?
 14 A. How did they address? Well, they went in
 15 there, and I think they tried to change the pulley setup
 16 on the pump and rearranged that so it would pump more
 17 volume of water. That didn't seem to work, so I think
 18 eventually they tried to put a different motor on there.
 19 Q. How did you keep informed about what Standley
 20 was doing to correct the problem?
 21 A. I would go and check with them and see what
 22 they were doing or how they were getting along.
 23 Q. Again, was this Jeff Griggs that you would
 24 work with?
 25 A. He was the main contact.

1 A. It would be the same guy, Jeff.
 2 Q. Did Jeff recommend that you clean out those
 3 rock traps on a regular basis?
 4 A. Yes.
 5 Q. About how regular?
 6 A. I don't remember how often he said.
 7 Basically, I concluded I have one guy that is,
 8 basically, running around driving a tractor around there
 9 most of the time. I just, basically, included that any
 10 time he goes by there to stop and do that.
 11 Q. That he should stop and clean out rock traps.
 12 A. Yeah. He is required to go push the feed up
 13 no less than every two hours.
 14 Q. What do you mean by "push the feed up"?
 15 A. On the tractor, push the feed closer to the
 16 cows so they can eat it.
 17 Q. So his job is to push the feed up every two
 18 hours?
 19 A. Yeah.
 20 Q. In his route of doing that, you have
 21 instructed him to stop at the separator and clean out
 22 the rock traps; is that correct?
 23 A. Right.
 24 Q. Was it Standley's recommendation that those
 25 rock traps be cleaned out about every two hours?

1 A. That is part of it. We take the material,
2 which would be the stacked manure, put it out in
3 wind rows, and there is a fellow that we pay that comes
4 out and manages the wind rows and turns it and oversees
5 the composting process. Then we take it from there,
6 after it's been dried, and we put it back in the stalls.

7 Q. About how much time does it take to go from
8 the stack to being ready to put into a stall?

9 A. In the summer months, you are probably looking
10 at three months. In the winter, you are probably going
11 to have to wait until summer or drier spring weather.
12 We are still in the process of doing that now.

13 Q. So back when the dairy first started up, was
14 it about a three-month time period before you started
15 putting compost in the bedding area?

16 A. No.

17 Q. When did you start replacing with compost?

18 A. Within the first week or two, a couple weeks.
19 We bought it within the first week or two, I think, or a
20 couple weeks.

21 Q. The compost that you replaced the -- you said
22 you purchased?

23 A. Yeah.

24 Q. Can you give me an idea of about how much time
25 it took for all of the initial sand and gravel to be out

1 DeGroot Dairy today?

2 A. No.

3 Q. Where is it?

4 A. It's, basically, mothballed off to the side of
5 our current system; it's just sitting there.

6 Q. Can we define "it"?

7 A. There is two roller press machines; there is
8 the large stacker; there is two slope screens; there's
9 other conveyor belts and stuff.

10 Q. Is there any part of the original manure
11 handling system being used on the DeGroot Dairy today?

12 A. The pipes that are in the ground.

13 Q. And that would be part of the flush system,
14 correct?

15 A. Yeah.

16 Q. When did the parts from the manure handling
17 system get removed from usage?

18 A. I can't --

19 Q. If you can't come up with the specific date,
20 that's okay. If you can, give me even a month or a time
21 of year.

22 A. It was wintertime.

23 Q. Do you think it was --

24 A. It was that first winter we pulled the
25 stackers out of there, built a big wall and just put the

1 of the system?

2 A. I can't tell you.

3 Q. But there is none today?

4 A. If you dig down, down, down, down, down, there
5 is some in there. Probably about a foot, foot and a
6 half down.

7 Q. In the initial days when that was the fresh
8 bedding for the free stalls, is it fair to say that
9 there were large amounts of that bedding being flushed
10 down the alleys?

11 A. Some of it got down there.

12 Q. And it is from that bedding that the rocks and
13 sand got into the other parts of the system?

14 MS. FISCHER: Object. He's already answered
15 that.

16 Go ahead. You can answer it again.

17 MS. DOUGHERTY: I want him to clarify if the
18 rocks and sand that got into the other parts of the
19 system came from the bedding and the flushing down the
20 alleys.

21 MS. FISCHER: Object as to form.

22 THE WITNESS: Yeah, because everything that
23 went through the system was whatever was in the alleys.

24 Q. BY MS. DOUGHERTY: Is the manure handling
25 system that was installed by Standley operational on the

1 slope screens up there, just got the stackers out of
2 there, and continued to use the pumps that they had.

3 Q. You said that was the first winter?

4 A. Yes. It was probably January or February.

5 Q. Who decided to build the wall?

6 A. That was -- I don't know.

7 Q. Did you make any recommendations about
8 modifying the system?

9 A. I just said: We have to do something
10 different because this is a bunch of BS.

11 Q. Who did you say that to?

12 A. My dad.

13 Q. So describe for me what this big wall was.

14 A. It was a concrete wall. Basically, we set the
15 slope screens -- to take the stackers -- or not the
16 stackers -- take the stackers out of play and the roller
17 presses and just use the slope screens to dewater the
18 manure.

19 Q. So you were removing the mechanical process
20 and replacing it with a gravity process; is that right?

21 A. Yes.

22 Q. And the design of this new system, this
23 gravity system, who came up with that?

24 A. I don't know.

25 Q. Do you think you played a part in that design?

1 A. No. I don't remember.
 2 Q. Did you direct any of the construction of the
 3 new gravity system?
 4 A. No. I was busy trying to take care of the
 5 cows and do all that stuff and cow work and employees,
 6 things like that.
 7 Q. So who would have been directing that?
 8 A. I think Beltman went and did it.
 9 Q. Do you think Beltman designed the wall and the
 10 system?
 11 A. I know he put it in.
 12 Q. Would your dad have been working directly with
 13 Beltman on that?
 14 A. More than likely.
 15 Q. What did you do in the mean time?
 16 MS. FISCHER: Object as to form.
 17 Q. BY MS. DOUGHERTY: What did you do in between
 18 taking out the stacker and the mechanical process on the
 19 manure handling system and having the wall built with
 20 the new slope screens?
 21 A. There wasn't a whole lot we could do. We just
 22 had to -- we tried to scrape our alleys. We would
 23 scrape all the stuff out of the alleys because the
 24 flushing would only add to the problems that were
 25 happening.

1 A. At or [redacted] in time they were out there, and
 2 they said, "We'll get you a manual out here, and we'll
 3 put it in Spanish and English, and we'll label certain
 4 parts of this equipment, as far as grease points and
 5 things like that that needed to be taken care of, and
 6 we'll have a meeting with your guy and set up a schedule
 7 when that needs to be done." That is what I was told.
 8 Q. This would have been in the earlier months
 9 when the system was still operational; is that right?
 10 A. Yeah.
 11 Q. Were you provided with that material?
 12 A. No.
 13 Q. What type of servicing or maintenance did you
 14 do on the manure handling system other than cleaning out
 15 the rock traps and the settling pans?
 16 A. Frankly, I was not aware that we needed to be
 17 doing anything.
 18 Q. Is it unusual to have equipment that runs on a
 19 daily basis not need maintenance?
 20 A. No, it's not -- I mean -- what?
 21 Q. Is it unusual for equipment like that that
 22 runs on an everyday basis to be free of maintenance?
 23 A. A lot of stuff doesn't need daily maintenance.
 24 Most of our stuff -- no, everything needs some
 25 maintenance, yeah.

1 Q. So did you turn off the flushing system at
 2 that time, too?
 3 A. Yes.
 4 Q. Do you know about how long you had the
 5 flushing system turned off and were manually scraping?
 6 A. No.
 7 Q. Can you give me a guess? Was it more than a
 8 week?
 9 A. Oh, yeah.
 10 Q. Month?
 11 A. Probably not. It was -- I can't remember.
 12 Q. Something less than a month but more than a
 13 week?
 14 A. I can't -- I don't know.
 15 Q. Do you think this happened in the January,
 16 February 2001 time frame?
 17 A. Yes, somewhere in there.
 18 Q. Who was responsible for the manual scraping
 19 and cleaning up then?
 20 A. An employee.
 21 Q. Would that employee have been directed by you?
 22 A. Yeah.
 23 Q. Were you ever advised by anyone from Standley
 24 that they would provide you with any kind of manual or
 25 instructions on how the system worked?

1 Q. Earlier you were talking about a calendar that
 2 you keep in your office to help you keep track of things
 3 like maintaining equipment. Would the manure handling
 4 system and the flush system have been included on that
 5 routine maintenance schedule?
 6 A. Yes.
 7 Q. Do you recall putting the manure handling
 8 system or the flush system on your calendar for routine
 9 maintenance?
 10 A. No.
 11 Q. Do you recall any type of routine maintenance,
 12 other than cleaning the rock traps, on either the flush
 13 system or the manure handling system?
 14 A. Initially, I didn't have to worry about it
 15 because Standley said they were going to come out and
 16 service it, come out on a regular basis and service
 17 everything, so I didn't have to worry about it.
 18 Q. Would that have been Jeff Griggs who would
 19 have told you that?
 20 A. Yeah, or -- yeah, I think so.
 21 Q. Is the big wall with the screens, the slope
 22 screens, still being used today?
 23 A. The wall is, not the screens.
 24 Q. What are you using instead?
 25 A. We have -- what are we using for what?

1 Q. How many employees were working for the
 2 dairy this year?
 3 A. How many?
 4 Q. How many employees do you have working on the
 5 dairy?
 6 A. Today?
 7 Q. Yes.
 8 A. 21.
 9 Q. How many did you have last year?
 10 A. 21.
 11 Q. So it turned over about three times?
 12 A. Yeah.
 13 MS. DOUGHERTY: I don't think I have any other
 14 questions.
 15 MS. WHARRY: I need to take a break for a
 16 minute.
 17 (Break taken.)

EXAMINATION

QUESTIONS BY MS. WHARRY:

21 Q. My name is Martha Wharry. I represent Houle,
 22 the manufacturer, the alleged manufacturer. And Peg did
 23 a pretty thorough job, so I'm probably not going to
 24 spend a lot of time with you. But I'm going to do just
 25 some follow-up, some clarification as to a couple

1 you had looked at screw presses for the Idaho dairy as
 2 a possible type of handling system?
 3 A. Yes.
 4 Q. That you talked to a neighbor in Washington
 5 about it?
 6 A. Yes.
 7 Q. Do you recall that testimony?
 8 A. Yes.
 9 Q. Do you recall who it was you talked to in
 10 Washington about this screw press system?
 11 A. The fellow who had it at his place was John
 12 Bossman. They were close by, so we figured we'll run
 13 over there and check it out.
 14 Q. Your father went with you to go check it out;
 15 is that correct?
 16 A. Yeah.
 17 Q. When you were talking about the parts of the
 18 manure handling system, you talked about these V-shaped
 19 screens and you talked about a separator. Are you using
 20 those terms interchangeably or are they different parts?
 21 A. After we took them apart, they were different
 22 parts. I don't know if they are different parts because
 23 there was a slope screen, and just below it there was
 24 roller presses. Down the line we separated them.
 25 Q. So when you are talking in your description

1 questions.
 2 A. Okay.
 3 Q. You testified earlier that the day following
 4 the equipment becoming operational there was a problem
 5 with the stacker backing up and you had a call in to
 6 Standley to come fix it. Do you recall that testimony?
 7 A. Yes.
 8 Q. Do you recall how long between the time you
 9 talked to representatives of Standley and someone came
 10 out to take a look at it? How much time that was?
 11 A. I think they came that afternoon or that
 12 morning. They came sometime that day.
 13 Q. Did you have the manure handling system
 14 continue to operate in that time frame while you were
 15 waiting for Standley?
 16 A. No.
 17 Q. You had turned it off?
 18 A. We couldn't operate it.
 19 Q. So you had turned it off?
 20 A. Yeah. I don't remember. I don't know if I
 21 turned it off or if it turned itself off. It wasn't
 22 working.
 23 Q. Did it have an automatic shut off?
 24 A. No.
 25 Q. You indicated in your testimony with Peg that

1 about the separator, what are you referring to?
 2 A. I'm referring to the separator, the whole
 3 deal, the screen and the press.
 4 Q. Okay. So you're not referring to some totally
 5 separate piece of equipment besides the screens and the
 6 press?
 7 A. No.
 8 Q. You testified that your father had seen the
 9 system that was installed at the Idaho dairy at a trade
 10 show and decided that is what he wanted after talking to
 11 the people there; is that correct?
 12 A. Yes.
 13 Q. That was a different trade show from the one
 14 you attended in Idaho when you talked to Kurt Standley;
 15 is that correct?
 16 A. Yes.
 17 Q. Do you recall or do you know when your father
 18 went to this trade show? Where it was?
 19 A. It was Tulare Farm Show World Ag Expo.
 20 Q. Do you know whose booth it was that Charlie
 21 saw the system that he wanted?
 22 A. No.
 23 Q. Between the time that you arrived in Idaho in
 24 April of 2000 and the first month of the dairy being
 25 operational, approximately how many times did you see or

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 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 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 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.

CERTIFICATE OF ERNEST DEGROOT

I, ERNEST DEGROOT, being first duly sworn, depose and say:

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

DATED this 18 day of December, 2003.

Ernest Degroot

ERNEST DEGROOT

SUBSCRIBED AND SWORN to before me this 18 day of

December, 2003.



Donna S. Allen

NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR Idaho

RESIDING AT Nampa

MY COMMISSION EXPIRES 7-19-09

2364B4 (Due December 21, 2003)

EXHIBIT
“G”

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,)

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

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Page 29

1 A They were vague.

2 Q Who prepared the plans?

3 A As far as I know Kurt had a lot -- well,
4 on what plans are you talking about?

5 Q Well, you see, you have the advantage of
6 knowing which plans you're referring to and I don't.

7 A The blueprints of the dairy itself, the
8 freestall barns, and all of that, I really don't
9 know who prepared those plans. But as far as waste
10 management in there, it was not on those plans; no.

11 Q Just so we are clear, though. Standley
12 was involved as a subcontractor with Beltman
13 Construction as a general contractor of this
14 project. Correct?

15 A Yes, they were.

16 Q In your job as foreman how did you know
17 what to oversee by way of a subcontractor's work?

18 A How did I know what to oversee?

19 Q Correct.

20 A I really didn't.

21 Q Wasn't that part of your responsibility as
22 foreman for Beltman Construction?

23 A The freestall part of it, and the welding,
24 and the concrete there, yes, it was. That was on
25 me. But once it got to the end of my freestall

Page 30

1 barns, no, it wasn't.

2 Q And what do you base that on?

3 A What do I base that on?

4 Q Well, Beltman Construction was the general
5 contractor; right?

6 A Yes, they were.

7 Q Beltman Construction had agreed with
8 Mr. DeGroot to deliver a dairy, right?

9 A Yep.

10 Q And Beltman Construction put together a
11 bid that had components from subcontractors, right?

12 A Yep.

13 Q And you were there to make sure the
14 contract was completed, right?

15 A Yes, I was.

16 Q And the subcontractors worked as part of
17 the contract, right?

18 A Yes.

19 Q What were you doing to make sure the
20 subcontractors did what they were supposed to under
21 the contract?

22 A On what part? The whole thing?

23 Q The whole thing.

24 A What Standley did I wasn't really that
25 much involved in.

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1 Q And I'm asking you why not? Wasn't it
2 part of your responsibility as a foreman for Beltman
3 Construction to deliver the project Mr. DeGroot
4 bought? That was your responsibility, right?

5 A It was my responsibility. But it is not
6 my expertise, also.

7 Q I didn't ask you about that. I'm asking
8 you what you did to make sure Chuck DeGroot bought
9 what he paid for. Got what he paid for.

10 A Okay. Let me ask you this. How would I
11 know if a pit was supposed to be 10 X 10 or 50 X 50?
12 That is not my expertise.

13 Q And that is a very good question. How
14 were you overseeing the project when you didn't have
15 that information at hand?

16 A That is a good question. Because we
17 relied on the expertise of Standley & Company to put
18 in a manure system.

19 Q And what did you do to see if that was
20 happening? And the answer is nothing; correct?

21 MR. DINIUS: Object to the form.

22 THE WITNESS: No.

23 Q (BY MR. McCURDY) Well, what did you do,
24 then?

25 A What was I supposed to do? The only thing

Page 32

1 I did was make sure the thing was square.

2 Q That what thing was?

3 A Everything was symmetrical to the dairy.

4 Q And that is all you did? Is that your
5 testimony today?

6 MR. DINIUS: Object to the form.

7 THE WITNESS: Do I have to answer that
8 question?

9 MR. DINIUS: Yeah, unfortunately I don't
10 represent you here.

11 THE WITNESS: What was the question again?

12 MR. McCURDY: Why don't you read it back,
13 please.

14 (Record was read back.)

15 THE WITNESS: That would be my testimony
16 today, yes.

17 Q (BY MR. McCURDY) You indicated that you
18 met earlier today with Mr. Dinius; is that correct?

19 A I met him when I was walking in. I didn't
20 meet with him. I just met him.

21 Q So you saw him and exchanged greetings?

22 A Yes. Said hello.

23 Q Before today's deposition, at anytime in
24 the last two weeks, have you spoke with either Chuck
25 DeGroot or Ernest DeGroot?

REPORTER'S CERTIFICATE

I, MONICA M. ARCHULETA, CSR NO. 471, Certified Shorthand Reporter, certify;

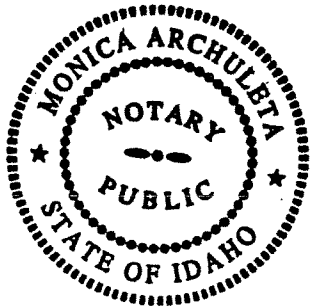
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

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 true and correct record 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 party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 30th day of OCTOBER, 2002.



[Handwritten Signature]

MONICA M. ARCHULETA, CSR NO. 471

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires: August 3, 2006

EXHIBIT
“H”

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



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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?

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.

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.

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 Jerome, Cassia, Gooding. And then a few years later,
2 we also are the Utah dealer now.

3 Q. So you are a Houle dealer as we sit here
4 today?

5 A. I am.

6 Q. As I understand, sometime within the last
7 year or so, you also became a Fan distributor?

8 A. Correct.

9 Q. And that's for the Fan separators?

10 A. Correct.

11 Q. Do you handle any other Fan equipment?

12 A. I do. Fan makes -- Fan makes screw press
13 separators, centrifugal separators, high speed/low
14 speed, and DAF units.

15 Q. What's a DAF unit? I think I understand the
16 other ones.

17 A. A DAF unit is diffuse air facility, which it
18 involves chemical application. It's a box, say, like
19 this table, and you run effluent through it. You add
20 chemical to it. There is a bubble maker basically in
21 the floor of it. It makes 30 micron bubbles that
22 float up, and you add aluminum sulfate or ferric
23 sulphite to flock the effluent. They use them in
24 paper mills and kill floors. And they are trying now
25 to adapt this technology to dairy.

1 A. The Fan has been probably the more prevalent
2 of late, primarily, because of a lot of barns that we
3 have done have switched from flush to scrap. And
4 Houle doesn't make a flush -- or Houle doesn't make a
5 scraped manure separator, or a very good one. And if
6 the advantage with the screw pressed separator, is it
7 can handled scraped manure.

8 Q. I assume scraped is dryer, not as much water
9 content?

10 A. Right; exactly.

11 Q. Back to the '98 time frame, when you've
12 testified that you became a Houle distributor, was
13 there any training associated with becoming a Houle
14 distributor?

15 A. You went back to the factory, and you
16 basically went through how they made them. I wouldn't
17 say that, as far as hands-on training, there was a
18 tremendous amount of that. You kind of got to know
19 the pieces and how they fit together, but the training
20 typically was on-the-job training, as for repair. If
21 that's your question?

22 Q. Fair enough.

23 A. Do you know what I mean?

24 Q. So, again, if I understand you, as far as
25 repairing Houle equipment, that was more

1 When you add the chemical to it, the solids
2 coagulate together, the air bubbles raise them to the
3 top and you have a big paddle comes and sweeps this
4 effluent off the top, and you have better water. You
5 are just trying to clean your water up, basically.

6 Q. Why did you become a Fan distributor?

7 A. I was asked to by dairymen. There was one
8 in place, a guy named Jim Etherington was in place.
9 We had a sort of a rabbi agreement between him and me.
10 I try typically to stay -- well, I don't know that I
11 should say, I try to stay on the blue-collar side.
12 But being blue collar all my life, it's easier for me
13 to stay on the blue-collar side. And I was going to
14 do his installations, and the same thing that I had
15 done for other people. And he would make the sale,
16 and I would install.

17 He went out to a dairy in the Magic Valley
18 and dropped off a Fan separator and said, "Call
19 Standley's, they'll hook it up," and left, and it kind
20 of pissed the dairyman off. The dairyman called Fan,
21 and Fan called me, and we hooked up.

22 Q. Are you installing any Houle separators
23 still --

24 A. Yes, sure.

25 Q. -- or are you installing principally Fan?

1 on-the-job-type training?

2 A. Pretty much.

3 Q. Did Houle supply a factory rep or anything
4 for the first three or six or twelve months to kind of
5 shadow you and help you?

6 A. Yeah, they had factory reps. Any problems
7 that we would have, they have a United States
8 warehouse in -- I'm not sure where it's at -- in
9 Milwaukee, or Minneapolis, or somewhere back there.
10 So you could get parts out of the States. You didn't
11 have to go through Canada, and the shipping thing is
12 always the problem. There are not a whole lot of
13 parts to a pump. It's not high-tech. It's pretty
14 basic.

15 Q. And maybe I misunderstood. How long did you
16 have a factory rep conducting on-the-job training?

17 A. Well, ever since I was a Houle dealer.

18 Q. Still to this day?

19 A. Yes.

20 Q. So how does that process work? I mean, do
21 you go out and if you can't figure it out and fix it,
22 the factory rep comes out and helps you fix it?

23 A. Yeah, if we have a problem, or whatever, you
24 call the factory rep and get them involved if it's an
25 equipment problem, or whatever that problem may be.

1 DeGroot project?
 2 A. He was actually my initial involvement in
 3 the DeGroot project.
 4 Q. Tell me what you mean by that.
 5 A. He brought Chuck DeGroot to me at the Tolero
 6 Farm Show.
 7 Q. And that's the big ag show down in
 8 California?
 9 A. Yeah, correct. And we were introduced there
 10 and talked about manure pumps and separators and such.
 11 Q. When was that?
 12 A. '99, I think, or '98 -- '98. The first
 13 year, '98, because we started Chuck's construction in
 14 '99.
 15 Q. And this --
 16 A. '98 or '99.
 17 Q. I'll tell you that Chuck's project started,
 18 construction started in --
 19 A. Summer of '99.
 20 Q. Summer of '99.
 21 A. So it was probably '99. Because the farm
 22 show is the next week, the week after next.
 23 Q. It's the same week every year?
 24 A. The same time every year.
 25 Q. Now, was that the first year that you had

1 assigned to?
 2 A. He did.
 3 Q. Do you know what that was?
 4 A. Not exactly.
 5 Q. Obviously, it included Idaho?
 6 A. Yeah, it's the West Coast.
 7 Q. What's Troy's capacity with your company
 8 today?
 9 A. He's a sales manager.
 10 Q. What does that mean? What does he typically
 11 do?
 12 A. He typically works with me on dairy
 13 equipment design and sells equipment. The dairy
 14 design work on new builds is really probably a fairly
 15 small section of our company, that area. So Troy
 16 sells other things, I mean, other manure equipment,
 17 things of Houle's, sells all the Fan stuff. We sell
 18 mats. We're a Real Hose Irrigator distributor. We're
 19 a vacuum tank distributor. We have a handful of
 20 product lines in the manure business.
 21 Q. And Troy manages that for you?
 22 A. He manages that; right.
 23 Q. And if I heard you right, he helps you on
 24 the design side of things?
 25 A. He does.

1 gone to the Tolero Ag Show?
 2 A. I believe it was.
 3 Q. That was in '99?
 4 A. We signed up as a dealer in October of '98,
 5 and they used to have this small show here, actually,
 6 at the Idaho Center that they have discontinued. In
 7 October of '98, was the first time I had ever seen any
 8 Houle equipment, and it was at that show.
 9 Q. And were you a distributor by that point in
 10 time for Houle?
 11 A. I was, yes.
 12 Q. Okay.
 13 A. And then we did the farm show in '99, and
 14 that's where I met Chuck.
 15 Q. And John Roth?
 16 A. In February of '99. John Roth, yes, he did.
 17 Q. And I'll come back to that. And then Troy
 18 Hartzell, does he work for you today?
 19 A. He does today.
 20 Q. In '99, 2000, did he work for you?
 21 A. He worked for Houle.
 22 Q. What was his capacity with Houle, if you
 23 know, in '99, 2000?
 24 A. Field rep.
 25 Q. Did he have a geographical area that he was

1 Q. When he was employed with Houle as a sales
 2 manager, did he assist you in designing dairies in
 3 that capacity? And by that, I mean, prior to coming
 4 to work for you.
 5 A. I would say so.
 6 Q. Did he have any involvement in the Troost
 7 dairy?
 8 A. He would have had some.
 9 Q. Do you have any other employees that are
 10 employed with you today that we haven't talked about?
 11 And I want to draw a distinction. I'm not interested
 12 in laborers at this point.
 13 I mean, I would view this group, you have
 14 your general manager, repair and service, Boise area
 15 foreman, and then your sales manager, that is kind of
 16 your core group?
 17 A. Correct.
 18 Q. Do you have anybody else that would be
 19 within that core group that we haven't talked about?
 20 A. The only other guy would be a guy named Gary
 21 Kennison. When John went to being our, what we call
 22 our order desk in sales, we needed a repair foreman,
 23 and Gary Kennison now does that work.
 24 Q. Now, you said something about John. Are you
 25 talking about John Gomez?

1 Q. Okay. The same question with respect to the
2 roller presses.

3 A. No.

4 Q. As of February '99, had you installed any
5 roller presses?

6 A. I had not.

7 Q. Had you installed any of the -- I may get
8 the number wrong -- but any of the three-inch agi
9 pumps?

10 A. I'd have to check the records. Probably the
11 initial sellers that actually did pretty good, is they
12 make a 42-foot lagoon pump. It is also an agitator
13 pump. Those were probably the best sellers
14 originally, and the eight-inch agi pump that goes into
15 a pit. I don't know that we sold any by February, but
16 those were kind of the better sellers out of the box,
17 if you will.

18 Q. You mentioned a 42-foot lagoon pump?

19 A. Correct.

20 Q. What do you mean by that? Or explain what
21 that means to me.

22 A. That is a pump that is on an axle-base, two
23 wheels, you can get it actually for extended coverage
24 on the wheels. That's 42-foot long. It's PTO drive.
25 You put a tractor on this end (indicating), and back

1 conversation with Chuck? I mean, during this Tolero
2 Ag Show, did he indicate to you that he was interested
3 in Houle equipment?

4 A. Not that I recall.

5 Q. Did you get his contact information to do
6 any kind of follow-up with him to try and make a deal?

7 A. No. We were at that time trying to put a
8 deal together with John Roth. He was going to be the
9 general contractor, and we were trying to work under
10 his -- John Roth wanted to put more or less a team
11 together, a concrete guy, an underground guy. He's
12 the steel builder guy. And he tried to get Showalter
13 to be the dirt guy. And Showalter's typically stays
14 fairly independent of that group, but yet travels with
15 that group, if you will. And we did a lot of dairies
16 together.

17 We were going to initially start with Chuck
18 DeGroot's. John Roth introduced me to Greg Troost.
19 John Roth introduced me to Bernie Tunniesen, and Larry
20 Vanderstelt, and Adrian Kroes, and goes on and on.

21 Q. Did Isom Industrial end up building any of
22 those dairies?

23 A. They ended up building Larry Vanderstelt's
24 and Adrian Kroes. Marion, like we said did Greg's,
25 and like we said, did Chuck's.

1 it into your lagoon, and then it has a right angle
2 drive on it, which is what the agi pumps have on it.
3 And then it gets the lagoon turning, mixed up, and
4 then you switch this valving hydraulically, and the
5 valve goes from -- it has kind of a crane neck looking
6 thing that pumps manure through this deal, like this
7 (indicating), to beat up, crusted, dry manure on the
8 top. And then you change the valve, and the valve
9 doesn't go out the crane neck. It goes out the
10 discharge line for hauling of manure. Then you'll
11 load a tank or --

12 Q. And spread it on a field or something?

13 A. Exactly.

14 Q. And the eight-inch agi pump, you indicated
15 that goes into a pit. That goes into a reception pit?

16 A. It is a four-inch agi pump.

17 Q. I thought you said eight inch.

18 A. They make an eight-inch hog pump. They make
19 it four inch. You can get an agi pump in a six inch.
20 But the eight inch is the hog pump.

21 Q. So those, the 42-foot lagoon pump and the
22 four-inch agi pump were the principal Houle products
23 as of this February '99 time frame?

24 A. When I first started, yeah.

25 Q. Do you remember anything about your

1 Q. Anything else you remember about your first
2 contact with Chuck or Mr. Roth at this Tolero Ag Show?

3 A. No.

4 Q. You understood at that time, though, that
5 Roth or Isom Industrial was going to be the general
6 contractor for the construction of Chuck's dairy?

7 A. No.

8 Q. Maybe I misunderstood you.

9 A. He was --

10 Q. You indicated --

11 A. He was bidding it.

12 Q. Okay.

13 A. He wasn't -- there was no formal that he was
14 going to build Chuck's dairy. He was just in the
15 bidding process.

16 Q. Did you indicate during this conversation or
17 meeting that you had with Mr. Roth and Chuck, that you
18 would be interested in -- actually, let me back up.
19 This is getting to be a bad question.

20 During your conversation with Mr. Roth and
21 Chuck at the Tolero Ag Show in '99, did you express a
22 willingness to be a part of this team as you've
23 described it?

24 A. Sure.

25 MR. DINIUS: You know, why don't we take a break.

1 We've been going about an hour.
 2 MR. KELLY: Sure.
 3 MR. DINIUS: We're off the record.
 4 (A recess was had.)
 5 MR. DINIUS: We're back on the record.
 6 Q. (BY MR. DINIUS) Before we went and took a
 7 short break, we were talking about the Tolero Ag Show.
 8 And your first introduction to Chuck. Was that, in
 9 fact, the first time you ever met Chuck DeGroot?
 10 A. Yes.
 11 Q. What happens after the Tolero Ag Show in
 12 connection with your involvement in the DeGroot
 13 project?
 14 A. Somebody supplies a set of plans. We had a
 15 set of plans out yesterday. As far as I can recall,
 16 it was the plans that you kind of get of they are kind
 17 of hand-made drawing things. They are not engineered
 18 drawings or anything like that. And you are asked, or
 19 I was asked by John Roth to put the water system in,
 20 and put the flush system in it, and whatever manure
 21 equipment would be needed. And so you get a list of
 22 footages, basically, pipe sizing. Then put a bid on
 23 it, you know, put a number on it.
 24 Q. And so if I understand you correctly, it was
 25 Mr. Roth that contacted you sometime after the Tolero

1 Q. Did he provide you a set of those plans that
 2 we were talking about -- the mystery drafter?
 3 A. Yes.
 4 Q. Did you in turn create a bid for the DeGroot
 5 Dairy?
 6 A. I did.
 7 Q. Now, you were talking too fast. I tried to
 8 write them down so we can go back. But you indicated
 9 that John asked you to handle the water?
 10 A. Typically, that's what happens. I can't say
 11 specifically that he asked me to draw a water plan for
 12 that. We didn't do much in the way of the parlor.
 13 The parlor was done by Bruce Cooper. I did have a bid
 14 with Bruce Cooper for the parlor work. The bid that I
 15 had with John Roth was just a water system and a flush
 16 system for DeGroot Dairy.
 17 Q. Okay.
 18 A. And a list of manure equipment, as I recall.
 19 Q. Do you still have a copy of the bid you gave
 20 to Mr. Cooper for the parlor work?
 21 A. Possibly.
 22 Q. Okay. That's another thing I'll ask you to
 23 take a look. If you find it, if it's electronic or
 24 whatever on your computer, I would ask that you don't
 25 destroy it. Get it to Mr. Kelly, so he can get it to

1 Ag Show and asked you to put a bid together based on
 2 -- and I didn't see the plans. I wasn't at Chuck's
 3 depo yesterday. I think I saw them before. And my
 4 recollection of those plans is they were drawn by
 5 either Roth or somebody else at Isom Industrial. I
 6 mean, is that your recollection?
 7 A. Well, and yesterday Chuck said they were
 8 given to him by Marion Vance.
 9 Q. Okay.
 10 A. I tend to agree with you. I thought they
 11 looked like John Roth plans, but, whatever.
 12 Q. Yeah, and that's not real critical.
 13 But so I understand the process, did Roth
 14 contact you after the Tolero Ag Show?
 15 A. We probably had some conversation prior that
 16 he was going to have a new build guy down there, Chuck
 17 DeGroot, and --
 18 Q. So before the ag show?
 19 A. We didn't talk about any real construction
 20 issues. Just that he wanted to bring Chuck DeGroot by
 21 the booth and introduce us. And we were going to try
 22 and get that project, yeah.
 23 Q. Fair enough. So after the Tolero Ag Show,
 24 Roth contacts you again?
 25 A. Correct.

1 me.
 2 A. Okay.
 3 Q. And you indicated you didn't get the bid for
 4 the parlor work?
 5 A. No, I did.
 6 Q. Oh, you did. Okay.
 7 A. I didn't get the bid for the water system
 8 work.
 9 Q. Okay.
 10 A. When it finally -- when all this -- I mean,
 11 it starts with John Roth but where it boils out is
 12 working for belt man.
 13 Q. And we'll work through that. Okay. So you
 14 submit a bid for the parlor work to Bruce Cooper, and
 15 you got that bid?
 16 A. Correct.
 17 Q. So you did the work in the parlor?
 18 A. I did.
 19 Q. What did your work in the parlor consist of
 20 in general?
 21 A. Drains and flush system for the parlor.
 22 Q. Okay. And the flush system for the parlor
 23 is completely separate and removed from the
 24 manure flush system?
 25 A. Correct.

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. 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 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 "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 A. That's me.
 2 Q. And then I see you've got only one roller
 3 press; is that right?
 4 A. That's correct.
 5 Q. And maybe I don't understand how the slope
 6 screens interplay with the roller presses. But can
 7 you run two slope screens into one roller press?
 8 A. That's what I wanted to try. Mostly as a
 9 savings to the dairyman, "Can you run two slope
 10 screens on one roller press?"
 11 Q. Can you?
 12 A. We never did. We ended up buying another
 13 roller press and putting it under the screen.
 14 Q. Have you ever tried putting two slope
 15 screens on one roller press?
 16 A. No.
 17 Q. The same question with respect to the two
 18 four-inch agi pumps. Who decided that two were
 19 necessary?
 20 A. I did.
 21 Q. Eight-inch floating flush pump, two of them.
 22 You made the decision that two of them were needed?
 23 A. Yes.
 24 Q. Tell me what the eight-inch floating pump
 25 is.

1 A. It's the pontoon pump that sits in the
 2 lagoon and supplies the water for the pump system.
 3 Q. There were two of those?
 4 A. Yes.
 5 Q. And did you actually install two of them?
 6 A. No, we installed one.
 7 Q. Why did you bid two?
 8 A. I can't remember.
 9 Q. And then the lane valves, you've got 14 of
 10 those. Are those the actual pump valves at the top of
 11 the free stalls?
 12 A. Yeah.
 13 Q. And, again, you made the determination that
 14 14 were needed?
 15 A. Yes.
 16 Q. You've got seven area valves. What are
 17 those?
 18 A. It's a different kind of a headed valve.
 19 Typically, a lane valve is more of a directional
 20 valve. It comes out in kind of a long snout, and gets
 21 it headed down this lane. And an area valve is a
 22 round valve that let's it come out 360 degrees.
 23 Q. Okay.
 24 A. It flushes an area.
 25 Q. The lane valves, 14 of them, those were all

1 at the top end of the free stalls in the allies?
 2 A. Correct.
 3 Q. So each free stall had two?
 4 A. Well, four. Each lane has one valve. So a
 5 free stall has four lanes in it, typically; two back
 6 lanes and two feed lanes.
 7 Q. Okay. Where were the area valves?
 8 A. Probably in behind the parlor and some
 9 access lanes, that's typically where they are used.
 10 Q. Then you bid three controllers. Are those
 11 the Rainbird-type controllers that we talked about?
 12 A. Correct.
 13 Q. And then air electrical solenoids, you've
 14 got 21 of those?
 15 A. Mm-hmm.
 16 Q. I'm assuming that each valve, whether it's
 17 lane or area, needs a solenoid?
 18 A. Correct.
 19 Q. Then you've got 3,000 feet of air line, and
 20 that's to run the air to each valve to make them open?
 21 A. Exactly.
 22 Q. 2000 foot of electrical conduit; yeah?
 23 A. Yeah. It typically in a -- when I bid with
 24 John Roth, it's more of a John Roth thing, is I'll put
 25 some electrical conduit -- not necessarily conduit.

1 It's kind of poorly written, but I'll provide backhoe
 2 work for the electrician and give him a budget number
 3 of 2,000 feet. Basically, it's a \$2,000 add-on, and
 4 I'll do the electrical guy's backhoe work. Because
 5 I'm the backhoe guy on the project, and if somebody
 6 needs a hoe, it's one of those deals, "Can you come
 7 here for a minute?"
 8 Q. Come over here, yes.
 9 A. You are doing things for other people and,
 10 typically, it's the electrician. So I started putting
 11 a little budget number in for them.
 12 Q. So that's not actually laying the electrical
 13 conduit?
 14 A. No.
 15 Q. That's kind of a built-in fluff for the
 16 extra stuff your backhoe is going to do during the
 17 project?
 18 A. Exactly. And like I say, technically,
 19 that's only with John Roth, because you get other
 20 generals, and I don't do that for them.
 21 Q. Well, this is your bid to Stan Beltman;
 22 right?
 23 A. Yeah, but it's just a copy of my John Roth
 24 bid.
 25 Q. Fair enough. Then the last thing on the

1 third page, you have a "Dry fiber stacker"?

2 A. Correct.

3 Q. I notice on this, all this equipment list,

4 you don't have any individual prices. Do you have a

5 worksheet, or a scratch pad that you did a compilation

6 to arrive at your total price for equipment? I mean,

7 where you break it out individually.

8 A. Sure.

9 Q. I don't think I've seen that. I mean, we'll

10 get into some invoices, and then I see what the stuff

11 costs from Houle, but I don't see anything that you've

12 written down.

13 A. Yeah.

14 Q. Do you think you still have that?

15 A. Probably not.

16 Q. And then turning to the last page of the

17 bid, you've got one-inch poly air pipe, 3,000 feet.

18 What's the difference between that and the 3,000 foot

19 of air line on the third page?

20 A. Ask that question again.

21 Q. Well, you've got on the last page, the first

22 item on the bid on the fourth page, is one-inch poly

23 air pipe, 3,000 feet. And if you flip back to the

24 third page, you've got air line 3,000 feet.

25 A. Yeah, the air line is like a three-eighths

1 going to be.

2 Q. So when you bid the four-inch agi pumps, for

3 instance, that doesn't include motors on them?

4 A. No. I mean, if the guy is going to tell you

5 it's going to be a ten-foot pit, then I know my motor

6 sizing from there. But if it's going to be a 20-foot

7 pit, it's going to be a different motor.

8 Q. Well, how about we talk the eight-inch

9 floating flush pump.

10 A. Okay.

11 Q. Did you know the size of the motor you

12 needed at the time you bid it?

13 A. Typically speaking, generally, they run 40,

14 50 horse. But I wait until I really know. Shit

15 changes when you get to building and --

16 Q. Sure. You've got to be flexible.

17 A. Well, you have to have a little, you know, I

18 mean --

19 Q. I understand. It's not all black and white.

20 A. It's not.

21 Q. Do you remember what motor for the floating

22 flush pump you initially --

23 MR. KELLY: I just want to see if this clarifies

24 anything.

25 THE WITNESS: It could be.

1 inch rubber air line, and you put it in a poly pipe.

2 It's a conduit, basically.

3 Q. So the second one, the one inch is a

4 conduit?

5 A. Yeah.

6 Q. Well --

7 A. And then below there, you have air line

8 conduit. That's what the air line conduit is. I

9 don't know what the poly pipe would be. Poly air

10 pipe. I don't know.

11 Q. Then in your handwritten notation there, it

12 says, "The price includes all shipping and

13 installation. Motors will be extras at time of

14 installation. PVC pipe for plumbing in and around

15 reception pits and manure equipment will be an extra

16 at time of installation as will construction work to

17 place."

18 Did I read that right?

19 A. I believe so.

20 Q. Okay. So you were foreseeing at this point

21 additional costs associated with what motors?

22 A. Motors on pumps, pump motors. I didn't have

23 any drawings or plans to steer by. So there was no

24 way to put the plumbing package on, or know what the

25 elevational changes, differences, blah, blah, blah are

1 MR. KELLY: Well, why don't you answer his

2 question?

3 Q. (BY MR. DINIUS) Do you need to clarify

4 something from before, because I forgot my question?

5 A. Well, he has a note here that makes sense

6 off the plan. I saw off of yesterday there were two

7 lagoons. So you may have two lagoon pumps or two

8 flush pumps in those lagoons. And I don't remember

9 specifically why I put two flush pumps in a bid.

10 Q. But the way the dairy was actually

11 constructed, there is only one lagoon; right?

12 A. Correct. And that's, again, back to the

13 flexibility thing. What you bid and what gets built

14 are typically different.

15 Q. Maybe I remembered my question. Do you

16 remember what horsepower motor you initially put on

17 the flush pump?

18 A. Only from yesterday's meeting. I don't -- I

19 wouldn't remember it without that meeting.

20 Q. What do you remember based on Chuck's

21 deposition?

22 A. 40 horse.

23 Q. Does that comport with your recollection?

24 A. I would think so.

25 Q. Tell me, and, again, I don't mean to ask

1 pit run, and I know what pit run is. Pit run has a
 2 lot of rock in it.
 3 A. It does.
 4 Q. Have you taken any samples of the bedding at
 5 the DeGroot Dairy from when that sand was put in?
 6 A. I have a collection of it.
 7 Q. Where do you have that at?
 8 A. At my office.
 9 Q. Would you get that to Mr. Kelly?
 10 A. Sure.
 11 Q. Because I've got samples of it, and I can
 12 show you after lunch. I don't see any rock in it,
 13 really to speak of.
 14 A. Okay.
 15 Q. I mean, you are correct, from your notes
 16 that I reviewed, that you can't get rid of it -- well,
 17 you could, but there is sand underneath the compost to
 18 this day?
 19 A. There is, and there will be.
 20 Q. And we've taken samples of that, and there
 21 is very little rock in it, and we've taken it from
 22 different places. So I would be interested in seeing
 23 what samples you have.
 24 A. Okay.
 25 Q. Do you recall where you took those samples

1 manure handling equipment?
 2 A. They were given instructions.
 3 Q. By whom?
 4 A. By me, by Jeff, by John, and by Jim Bullock.
 5 Q. Did they ever get a maintenance manual?
 6 A. I don't know. There is not a maintenance
 7 manual that I put out per my company. But there is an
 8 operations manual by Houle.
 9 Q. And does that operations manual that Houle
 10 publishes have maintenance information in it?
 11 A. I believe it does.
 12 Q. If I understand you correctly, that was
 13 never provided to DeGroot Dairy?
 14 A. It may or may not have been. I can't say
 15 that it wasn't.
 16 Q. Can you say that it was?
 17 A. I cannot say that either.
 18 Q. What process do you have in the ordinary
 19 course of your business, once you install equipment,
 20 whether it's pumps, separators, I mean, do you go
 21 through any process where you cover maintenance
 22 issues, warranty issues, and the like with the
 23 customer?
 24 A. I do.
 25 Q. Do you give them copies of that stuff?

1 from?
 2 A. Jeff would know.
 3 Q. Okay.
 4 A. He actually collected them.
 5 Q. Were you there when he collected them?
 6 A. I was not.
 7 Q. All right. I'll talk with him about that.
 8 Anything else associated with the pit run
 9 that you contend was put in there that has caused
 10 problems, aside from what you've already talked about?
 11 A. No.
 12 Q. You also referenced "neglected maintenance."
 13 Tell me what you mean when you say that.
 14 A. Again, it relates back to the sand issues.
 15 I guess that if you are going to have that much sand,
 16 that system would have worked and did work if you
 17 would keep it clean. Keep your, you know, your
 18 greases up. You are going to have to probably grease
 19 more, and you are going to have impellers, and bottom
 20 housing on pumps more, and do the things that are
 21 going to be required to run that in those conditions,
 22 but they weren't done.
 23 Q. Do you know if Chuck or anyone else at the
 24 DeGroot Dairy was ever given any instruction or manual
 25 from Standley relating to the maintenance of the

1 A. I do.
 2 Q. But you don't -- I mean, you can't say that
 3 you did in this case?
 4 A. I can't say. I don't remember doing it. I
 5 don't remember not doing it.
 6 Q. You contend that DeGroot's damages were
 7 caused by a modification or an alteration of products.
 8 Tell me what you mean by that.
 9 A. What's that?
 10 MR. KELLY: Why don't you tell him how and where
 11 he contends that?
 12 Q. (BY MR. DINIUS) Well, in your affirmative
 13 defenses you've contended that, "The damages, if any,
 14 as alleged by the plaintiffs were caused by a
 15 modification or alteration of the products used by
 16 either the plaintiffs, or other entities, or
 17 individuals."
 18 MR. KELLY: He's presumably referring to one of
 19 our answers to their complaint.
 20 Q. (BY MR. DINIUS) I'm referring to your
 21 answer to the second amended complaint and
 22 counterclaim.
 23 What modifications or alterations of the
 24 products do you contend occurred?
 25 MR. KELLY: I'll object from the standpoint that

1 it's an affirmative legal defense. But if
 2 Mr. Standley can answer that, go ahead.
 3 THE WITNESS: I don't think I can answer it.
 4 Q. (BY MR. DINIUS) Well, regardless of
 5 Mr. Kelly's objection, I'm entitled to find out what
 6 facts you know, or your company knows, that the facts
 7 that indicate modification or alterations of the
 8 products occurred?
 9 A. I don't think I can answer your question. I
 10 don't know of any.
 11 Q. Now, we talked about your belief that Chuck
 12 has somehow caused his own problems by using the sand
 13 in the beds and neglected maintenance. Is there
 14 anyone else out there, third party, individuals,
 15 entities that you contend caused any of the problems
 16 that the DeGroot Dairy is complaining of in this
 17 lawsuit?
 18 MR. KELLY: Object to the form.
 19 MS. WHARRY: Object to the form.
 20 THE WITNESS: And part of the complaint of
 21 Chuck's is the system doesn't work. Well, I guess
 22 then that it would include the pits and the separators
 23 and all that stuff. But it's not something I put in.
 24 So how am I responsible for that?
 25 Q. (BY MR. DINIUS) Well, I'm not saying that

1 A. Uh-huh.
 2 Q. Who set the junction box?
 3 A. That outfit out of -- I had the concrete
 4 company -- I can think of his name, but not his
 5 company, Rob McGarvin.
 6 Q. I've seen reference to something RM
 7 Construction?
 8 A. I can't remember the name. It's out of --
 9 if I had a phone book, I could look his name up.
 10 Q. We'll get to some invoices that tell that.
 11 A. Yeah.
 12 Q. Tell me his name again.
 13 A. Rob McGarvin is the guy that I knew.
 14 Q. And you had him build the junction box?
 15 A. Yes.
 16 Q. How deep was that junction box?
 17 A. I don't know.
 18 Q. Well, let's go at it this way: Who
 19 determined the specifications for that junction box?
 20 A. I wouldn't know that either. Its sole
 21 purpose is just to bring three pipes in, and it
 22 doesn't have a collection function. You know, what I
 23 mean? So it probably doesn't have any depth to it. I
 24 would assume it's three or four feet deep.
 25 Q. And I've seen it. I've seen the system in

1 you are. I'm asking you: What other entities or
 2 persons out there, you think may have contributed to
 3 the problems that the DeGroot Dairy complains of?
 4 A. Well, then --
 5 MR. KELLY: Object to form.
 6 MS. WHARRY: Object to the form.
 7 THE WITNESS: We would have to answer that,
 8 whoever designed the cell system and this manure thing
 9 in the back, would be at issue here.
 10 Q. (BY MR. DINIUS) Do you know who designed
 11 the cell system?
 12 A. I do not.
 13 Q. Did you have any input on the cell?
 14 A. I did not.
 15 MR. DINIUS: You know what, it's lunchtime.
 16 (A lunch recess was had.)
 17 MR. DINIUS: Back on the record.
 18 Q. (BY MR. DINIUS) Before we went to lunch,
 19 Mr. Standley, we were talking about some of the work
 20 back in the back end of the dairy related to the drain
 21 system.
 22 A. Mm-hmm.
 23 Q. We talked about the fact that your company
 24 did a trench and installed the drain line from the
 25 north free stall to the junction box.

1 operation. And every time I've looked in this
 2 junction box, it's been full of -- what do you call it
 3 -- green water --
 4 A. Sure.
 5 Q. -- is that the right term, when the manure
 6 is in it?
 7 A. Yeah.
 8 Q. I mean, very full of green water. So my
 9 assumption was that it was some point of collection
 10 point -- I understand you are bringing the parlor
 11 water in?
 12 A. Right.
 13 Q. Did you give this -- Rob?
 14 A. Rob, R-o-b.
 15 Q. Did you give him any specifications on the
 16 dimensions of that junction box?
 17 A. No, not specifically.
 18 Q. Has he worked for you before?
 19 A. He has.
 20 Q. Has he done similar type work for you
 21 before?
 22 A. He has.
 23 Q. So what do you say to him, "I need a
 24 junction box right over here"?
 25 A. "Give me a diverter box over there. I'm

1 A. Probably. I don't remember it specifically.
 2 But it wouldn't surprise me if I did.
 3 Q. Did you have any idea, or do you know
 4 whether or not, these are actual measurements --
 5 A. No.
 6 Q. -- or something akin to as-built?
 7 A. I have no idea.
 8 Q. Did you ever see a set of plans, while your
 9 company was on the project, that had the dimensions of
 10 all these sedimentation cells, the reception pit, and
 11 everything on them?
 12 A. Any plan?
 13 Q. Yes.
 14 A. Probably.
 15 Q. I mean, excepting this? I mean, I wouldn't
 16 consider this a plan.
 17 A. Oh, I never saw a plan then.
 18 Q. Okay. And that's what I'm struggling with,
 19 I guess, then trying to figure out where this came
 20 from. And maybe the only answer I have is to talk
 21 with Troy about it.
 22 A. Like I say, we do do a lot of drawings. We
 23 just do. We were trying to figure out how to -- you
 24 know, we had just come off of Benson's dairy, and saw
 25 that dairy. And we were interested in that. I mean,

1 I mean, was it at the front end, when you
 2 are ordering equipment, or is it --
 3 A. Oh, I wouldn't know.
 4 Q. And that's what I wanted more, or was more
 5 interested in.
 6 Do you know if Troy had any involvement in
 7 the design of the sedimentation cells, the lagoon, and
 8 the like?
 9 A. I don't. He didn't have with me. He may
 10 have done some work with Beltman.
 11 Q. And if I understand what you are saying, you
 12 had said that you had absolutely nothing to do with
 13 the design dimension of these sedimentation cells, the
 14 lagoon, or anything?
 15 A. The lagoon, I may have. I may have done a
 16 drawing back in the permitting days, or a sizing. I
 17 can't remember if I did that or not. Doing 180
 18 storage, how many cubic feet would that be, blah,
 19 blah, blah. But I don't -- typically, when it's
 20 permitting, I don't get too involved in that.
 21 Q. Were you involved in the DeGroot Dairy as
 22 early as the permitting phase?
 23 A. I'm sure I went to the permit hearing. I
 24 would think I would. We used to do that. John Roth
 25 would -- you know, we would kind of go as a group and

1 we really would like to do that and have done that
 2 since. Like Greg Troost, being more involved in the
 3 design side. Even free stall designs, and not just
 4 manure systems. Design a dairy that we can build and
 5 install and get permitted and jump through all the
 6 hoops they make you jump through these days.
 7 Q. Which are a lot.
 8 A. They are tremendous. I don't know that you
 9 can actually do it. How do you combat ammonia
 10 emissions? But in some places, Holland, for instance,
 11 they have an ammonia emission standard out of barns.
 12 And if your barn produces more ammonia than what your
 13 number says, then you are done: It's a fascinating
 14 business to me in that regard.
 15 Q. Sure. Well, before I move on, just to make
 16 sure. You don't remember any specific conversations
 17 with Troy about the dimensions and measurements that
 18 are set forth on this exhibit?
 19 A. No, I don't.
 20 Q. Do you have any idea when in time
 21 chronologically this would have been created?
 22 A. Well, I would assume around the time that we
 23 were doing Chuck's.
 24 Q. Yeah, right. Maybe I need to ask it a
 25 little better.

1 try to help the guy with permitting -- oh, what's his
 2 name -- the winery guy, Shane Weston, does pretty much
 3 all the permitting around here, and he's a friend of
 4 mine, and so we talk. And I wouldn't be surprised if
 5 I did. I don't remember it specifically, but...
 6 Q. So you may have had some involvement in the
 7 lagoon dimensions?
 8 A. It seems like I did a drawing for cubic feet
 9 on lagoon.
 10 Q. But --
 11 A. But then it ends up being like this kind of
 12 drawing, you know, "Where did it go? Where did it
 13 come from? Who did you do it for?" You just kind of
 14 do it.
 15 Q. Did you do any drawings related to the
 16 sedimentation cells?
 17 A. No.
 18 Q. Did you ever talk with Tom or Stan Beltman
 19 about the dimensions?
 20 A. I did.
 21 Q. Okay.
 22 A. Not dimensionally. I talked to them about
 23 their sedimentation cells. They built a set or were
 24 going to build a set over at Pete DeGroot's.
 25 Q. And that's in Kuna?

1 A. The date it was actually printed, you mean?
 2 Q. Yeah.
 3 A. I cannot.
 4 Q. Okay. Is the description of work, and the
 5 amounts for that work reflected on Exhibit 41, is that
 6 -- I mean, review it. I don't want to put words in
 7 your mouth. But does that reflect work that was done
 8 after the dairy was up and running? I mean, past the
 9 installation point.
 10 A. Yes.
 11 Q. Okay. And as you move through there, I see
 12 you've got descriptions relating to cleaning sand out
 13 of drains and equipment. Do you have any idea what
 14 that second item is, which is, "Extra to dairy not
 15 included in original bid" --
 16 A. I do not.
 17 Q. -- for \$3,304.94. How would we figure that
 18 out?
 19 A. There is an invoice for that someplace.
 20 Q. Do you know if you've turned those invoices
 21 over to your attorney?
 22 A. I have.
 23 Q. Have you turned those over to Mr. Kelly, or
 24 does Mr. Lewis have those?
 25 A. Mr. Lewis.

1 Q. -- the dairy is up and running, did you do
 2 any work on the pumps or separators that you did not
 3 charge DeGroot Dairy for?
 4 A. We did.
 5 Q. Do you have any record of that work?
 6 A. I would not.
 7 Q. So if I understand what you are saying, if
 8 you charge him for work, you would keep some reference
 9 to the work order, or what was done on site. If you
 10 didn't charge him, you didn't keep any records?
 11 A. Correct.
 12 Q. Moving down to September 14th of 2000, it
 13 looks like Invoice 149, replace 40 horsepower motor
 14 with 50 horsepower motor difference, and then there is
 15 an amount of \$1,755.97.
 16 A. Mm-hmm.
 17 Q. First off, when it says "difference" there,
 18 did you only charge Chuck the difference between the
 19 40-horse motor price and the 50 horse motor price?
 20 A. I would believe that's the case.
 21 Q. Okay. Tell me what led to replacing the
 22 40-horse motor with the 50-horse motor.
 23 A. Wanting more flush water.
 24 Q. Who made the determination to go from 40 to
 25 50?

1 Q. You've got on here, the fourth entry,
 2 "Repair on flush pump," for 97.50. Without the
 3 benefit of your invoices, do you know what that repair
 4 entailed?
 5 A. I do not.
 6 Q. We've talked about the warranty registration
 7 forms. And at least according to Houle's warranty
 8 registration form, if they are not signed by you and
 9 Chuck, there is no warranty on that equipment through
 10 Houle. Did you have any kind of warranty that you
 11 honored on the equipment at the DeGroot Dairy?
 12 A. I would think so, but I would not have
 13 record of it.
 14 Q. Okay. How would we know -- well, I'm
 15 assuming if you are charging him for something, that
 16 that's not under warranty?
 17 A. I would think so.
 18 Q. Okay. Do you know if you did any work on
 19 the DeGroot Dairy after you got the equipment
 20 installed, that you didn't charge him for?
 21 A. Say that again please.
 22 Q. Yeah, that wasn't very good.
 23 I'm focusing only on the point in time after
 24 you are done with the installation of the equipment --
 25 A. The dairy is operating.

1 A. Chuck.
 2 Q. Did you have any input in that?
 3 A. I don't -- I guess some. I mean, everybody
 4 wants more flush water. But we talked about it, and
 5 he said he'd pay the difference on the motor. So we
 6 put the motor in.
 7 Q. Okay. Did you go out and observe the amount
 8 of water that the 40-horsepower motor was delivering
 9 to the top end of the free stalls?
 10 A. I did.
 11 Q. From your estimation, was it sufficient?
 12 A. Yeah, I would say it probably was.
 13 Q. Is this in about the time that you did the
 14 Coke bottle test?
 15 A. I can't remember that.
 16 Q. While the 40-horsepower motor was on the
 17 flush pump, did you ever observe the free stalls in a
 18 condition that led you to think that they weren't
 19 being flushed adequately, I mean, build-up manure and
 20 the like?
 21 A. Yeah. Yes.
 22 Q. Okay. At some point, and my chronology is
 23 off. I don't know where this happened. I understand
 24 at some point in connection with dealing with the
 25 horsepower back there on that flush pump, the bayonet

1 fuses in that transformer box blew or were blown. Did
 2 you know about that?
 3 A. I had heard about it.
 4 Q. Okay. Did that strike you as odd?
 5 A. Yeah.
 6 Q. Had you ever seen a case or an instance
 7 where those bayonet fuses have blown?
 8 A. No.
 9 Q. And it's my understanding, but I'm certainly
 10 not an electrician, but my understanding is that's a
 11 pretty significant event? I mean, would that be your
 12 sense of that?
 13 A. I --
 14 MR. KELLY: I will object.
 15 MR. DINIUS: Let him object because I used the
 16 word "significant."
 17 MR. KELLY: I will object to the form.
 18 THE WITNESS: I probably wouldn't know. I
 19 wouldn't know the bayonet fuse if it was on the table.
 20 Q. (BY MR. DINIUS) Okay. Have you ever seen
 21 the inside of one of those transformers?
 22 A. I don't think I have. I've seen panels, if
 23 that's what you are talking about, but not an Idaho
 24 Power transformer.
 25 Q. And I may be using the wrong word. Is there

1 Q. Do you remember coming away with any sense
 2 of what amount of water was being delivered with the
 3 50-horse motor?
 4 A. No.
 5 Q. Was it adequate in your opinion? I mean, do
 6 you remember thinking to yourself, "Well, that's
 7 enough water to flush the alley"?
 8 A. There were some variables that were
 9 happening in the beginning. One, we couldn't get the
 10 lagoon filled up, and we would go back and forth on
 11 that quite a bit. So we were -- if the flush pump --
 12 and this is -- I can't tell you that I actually sat
 13 there one day and took notes with the flush pump in
 14 the top of the lagoon and the flush pump in the
 15 bottom. But it makes sense that it works better when
 16 it's floating near the top of the lagoon instead of
 17 the floor.
 18 We've went back and forth on that quite a
 19 bit. So as -- one day, you put the 40 horse on, and
 20 you know this level that you've been running at. And
 21 then the next day you do a 50, and you expect more
 22 water. It's not quite that. It didn't work quite
 23 work like that.
 24 Q. Was there an increase in water delivery with
 25 the 50 horse?

1 an Idaho Power transformer that is set out there by
 2 the corner or side of the lagoon where the flush pump
 3 was initially located?
 4 A. I can't remember.
 5 Q. Okay.
 6 A. There may be. I know there is a panel
 7 there.
 8 Q. Okay. Do you know if -- I mean, you
 9 indicated you heard about the problems with the panel
 10 and the fuses blowing. Did that occur with the
 11 40-horsepower motor on, or do you know?
 12 A. I wouldn't know.
 13 Q. Were you personally involved in setting the
 14 50-horse motor on?
 15 A. No.
 16 Q. Who installed that; do you know?
 17 A. I do not.
 18 Q. Did you at any point after the installation
 19 of the 50-horse motor, go out and see what kind of
 20 water was being delivered to the top end of the free
 21 stalls?
 22 A. I'm sure I did. I don't specifically
 23 remember it. But you have a habit of when you do
 24 these projects, of driving on them continually to see
 25 and look.

1 A. I'm sure there was.
 2 Q. I see on here, too, it looks like on
 3 September 18th, you replaced a conveyor belt. Would
 4 that be on the stacker?
 5 A. I would think so.
 6 Q. \$1,537.37 to replace the conveyor belt?
 7 A. Uh-huh.
 8 Q. What does a conveyor belt cost?
 9 A. I wouldn't know.
 10 Q. Okay. We should be able to tell that from
 11 Invoice 154 then?
 12 A. You would think.
 13 Q. Do you add a markup on the conveyor belt on
 14 the piece of equipment itself? I mean, I'm assuming
 15 you buy it from somebody.
 16 A. I do.
 17 Q. Do you pass that cost straight to your
 18 customer, or do you add 10 or 15 percent to it?
 19 A. I do.
 20 Q. You add 10 or 15 percent?
 21 A. Mm-hmm.
 22 Q. And is there going to be labor involved in
 23 replacing that conveyor belt?
 24 A. Yes.
 25 Q. And then it looks like, again, on September

1 29th, you are out to do repairs to the conveyor belt?
 2 A. Mm-hmm.
 3 Q. Would that again be on the stacker?
 4 A. I would think so.
 5 Q. Okay. It looks like that's another \$230.
 6 Can you re-sew those if they get torn or come apart?
 7 A. You can. It's been awhile. What would
 8 happen with the conveyor belt is, it has a roller
 9 assembly in the rear end, and it sits down, you know,
 10 in a stacking position. And the roller sits here
 11 (indicating), and the belt tracks, it can move. So
 12 you have some adjustments, fairly simple adjustments
 13 here (indicating) that you keep your roller --
 14 If your roller is square -- I mean, the belt
 15 stays in place, and it stays in place. But if it gets
 16 out of square, then it will track to the weak side, if
 17 you will, and then it starts tearing itself up. So
 18 all you had to do was keep that roller square, keep
 19 tension on it, and then you didn't have too much
 20 problems.
 21 Q. Again, on October 24th, 2000, Invoice 181,
 22 it looks like repairs to the short stacker.
 23 A. Mm-hmm.
 24 Q. Would that be the conveyor belt stacker?
 25 A. It would be.

1 A. Uh-huh.
 2 Q. Do you know what was going on those two
 3 days?
 4 A. I don't.
 5 Q. Then we move on down, and on the 9th of
 6 February 2001, \$4,538.28 charge for a 75-horse motor.
 7 A. Mm-hmm.
 8 Q. Tell me about that.
 9 A. Just exchange the 50 for a 75.
 10 Q. Who made that decision?
 11 A. Chuck.
 12 Q. So Chuck called you up and said he wanted to
 13 increase the horsepower by 50 percent?
 14 A. Yeah.
 15 Q. Okay. What did you say to him?
 16 A. Okay.
 17 Q. Okay. Did you go out and look at all to see
 18 how the 50 horse was performing?
 19 A. No -- well, again, you drive the places so
 20 often that you know.
 21 Q. Well, had you driven it and observed the
 22 DeGroot Dairy during this time period from September
 23 of 2000 through February of 2001 while the 50 horse
 24 was in operation?
 25 A. I'm sure I had.

1 Q. Then on November 22nd, "Unthaw and clean
 2 separator."
 3 A. Mm-hmm.
 4 Q. Had it frozen; do you know?
 5 A. I would think so.
 6 Q. What do you do to unthaw it?
 7 A. Get a weed burner and heat it.
 8 Q. Again, on December 4th, "Replace belts on
 9 conveyor labor only." Do you know if Chuck or DeGroot
 10 Dairy purchased the conveyor belt, and you guys just
 11 had to put it on?
 12 A. They could have.
 13 Q. And then on the same day, different
 14 invoices, you've got, "Repairs to stacker, repairs to
 15 stacker."
 16 A. And repairs to separator.
 17 Q. Yeah, I skipped over the separator. You've
 18 got \$315 to replace the conveyor belt, 315.20 for
 19 repairs to the stacker and \$529 for repairs to
 20 stacker. Do you have any idea, without the benefit of
 21 invoices, as to what work was done?
 22 A. I do not.
 23 Q. It looks like you have a couple of charges
 24 in December on the 21st and one on the 26th of
 25 December for de-icing the stacker?

1 Q. Do you recall seeing the alleys with
 2 accumulations of manure?
 3 A. I don't.
 4 Q. Do you ever recall seeing the system go
 5 through a flush during that period?
 6 A. Certainly.
 7 Q. Do you have any recollection of how
 8 effectively the flushes that you observed cleaned the
 9 alleys with that 50-horse motor?
 10 A. I thought they had cleaned the alleys fairly
 11 well.
 12 Q. Well, did you tell Chuck when he asked you
 13 for this 75-horse motor, that, "Hey, man, that 50 is
 14 doing fine. You don't need more horsepower."
 15 A. Not that I recall.
 16 Q. Okay. Do you have, or did you have at the
 17 time, any of the pump curve data for either the
 18 75-horse or the 50-horse motor?
 19 A. Probably not.
 20 Q. Do you today, as you sit here? I mean, do
 21 you have the ability to get that information?
 22 A. I think so.
 23 Q. Okay. Do you have any idea, as you sit here
 24 today, how much water or how many gallons per minute
 25 that 75-horse motor should move on that eight-inch

1 vertical pump?
 2 A. No, I wouldn't know.
 3 Q. I mean, does it go up in some relation to
 4 the horsepower? I mean, we talked about the 40-horse
 5 motor, and you thought -- and I'm not trying to play
 6 games with you or put words in your mouth -- but my
 7 recollection of your testimony was something like
 8 2,200 to 3,600 gallons per minute on the pump curve
 9 data?
 10 A. On the pump curve.
 11 Q. Well, for the 40?
 12 A. I'm guessing.
 13 Q. Does the 50 increase that by, what, 25
 14 percent or 20 percent?
 15 A. I don't know.
 16 Q. Because the 75 is almost double the 40. I
 17 mean, is it's going to move 4,000 to 6,000 gallons per
 18 minute?
 19 A. No.
 20 Q. From your perspective, was there really any
 21 need or benefit in upping the horsepower on that?
 22 A. More water is always good. You can't argue
 23 against it. If a guy wants to do it, then you do it.
 24 Q. Did you ever do any flow testing with the
 25 75-horse motor on that eight-inch vertical pump?

1 A. They do.
 2 Q. So it would make sense then to take the
 3 lowest level to calculate your friction loss
 4 because -- again, I'm not an engineer -- but it seems
 5 to me with that collapsible pipe that hooks the motor
 6 or the pump to your pipe that goes into the ground,
 7 that's where you lose the -- I mean, you lose a lot in
 8 that; right?
 9 A. You lose more than what you do in PVC pipe.
 10 Q. So your friction loss is greater in the
 11 collapsible pipe. And that collapsible pipe,
 12 depending on the level of the lagoon, is going to be
 13 steeper to where you are even going to have more
 14 friction loss; right?
 15 A. No. You'll have more friction loss due to
 16 elevation, not due to collapsible pipe.
 17 Q. Okay. And if I understand you, you didn't
 18 take into account the lowest level of the pontoon, or
 19 that the pontoon could be in the lagoon when you are
 20 doing that friction loss to that far free stall?
 21 A. You are correct.
 22 Q. Okay. Now, we didn't go through everything
 23 on Exhibit 41 as far as the work that was done. Is
 24 any of this work -- I mean, take a look at it, and
 25 review it in whatever detail you need to. Is any of

1 A. Not that I know of.
 2 Q. You talked a little bit ago about -- and I'm
 3 assuming, you are saying that Chuck was not managing
 4 the lagoon properly when you talk about the levels,
 5 and I'm assuming that relates to the pontoon being
 6 lower having to lift water higher. I mean, is that
 7 kind of where that's going?
 8 A. Yeah.
 9 Q. It seems like forever ago we talked about,
 10 when you are planning initially to spec your pump and
 11 the motor, and you are doing your head pressure
 12 friction loss calculation, you figure your
 13 calculations based on the furthest point that you've
 14 got to get. Do you remember that?
 15 A. Uh-huh. Yeah.
 16 Q. At the same time, do you take into account
 17 the lowest position that that pontoon can be in,
 18 because that affects your friction loss?
 19 A. I don't, but you are right.
 20 Q. Is that something you should have done?
 21 A. It's assuming that there is not going to be
 22 any water in the lagoon, so I wouldn't think you would
 23 do that.
 24 Q. Well, correct me if I'm wrong, but lagoon
 25 levels fluctuate in any dairy; don't they?

1 this work work that should have been warranty work?
 2 A. I would think not. Any work that we thought
 3 -- actually, when you get in these deals -- "these
 4 deals" -- you start a system, and you do what you do.
 5 I would think not.
 6 Q. Okay. You earlier indicated that you did do
 7 some work out at the DeGroot Dairy that you didn't
 8 charge him for?
 9 A. That's correct.
 10 Q. Who made the determination whether to charge
 11 for the work or not?
 12 A. Kind of all of us. I mean, Jim Bullock, if
 13 he's there, or Jeff, or John Gomez, or me.
 14 Q. Were you out there for any of the work
 15 that's set forth on Exhibit 41? I know that's a big
 16 question, but...
 17 A. I don't know.
 18 Q. I guess where I'm trying to get to is:
 19 Let's say Jeff is out there. Jeff doesn't think it's
 20 warranty work. He writes it out to bill it, sends it
 21 to your office in Twin Falls; right?
 22 A. Uh-huh.
 23 Q. Then you make the decision, "We're not going
 24 to charge him for this. He shouldn't have to pay,
 25 because if that equipment would have been working

1 hospital barn.
 2 A. Mm-hmm.
 3 Q. And you had it -- let's refer back to
 4 Exhibit 3. The hospital barn is in the middle of
 5 Exhibit 3; right?
 6 A. Correct.
 7 Q. And you indicated that you had it sloping
 8 north to south?
 9 A. Correct.
 10 Q. And if I understood you correctly, you said
 11 that Tom or whoever dug it up and sloped it south to
 12 north?
 13 A. Correct.
 14 Q. Did you ever ask him why they did that?
 15 A. No.
 16 Q. Because that doesn't make any sense; does
 17 it?
 18 A. It -- well, it actually makes counter sense
 19 to me. My idea was to put these two drains together,
 20 because you have a dry cow alley over here
 21 (indicating). So you have these two, three drain
 22 issues going to probably another diverter box, and
 23 then these (indicating) three drain issues coming to
 24 this (indicating).
 25 And I haven't been back and looked

1 reception pit to the screens? I mean, is that in
 2 connection with what we talked about the gallon per
 3 minute capacity of those agi pumps?
 4 A. Yeah. You fill the -- you fill that pit up
 5 full of sand, and it is going to start at the bottom.
 6 Short of making another exhibit, I'll -- can
 7 I draw you another picture? Even if we do a -- this
 8 is just kind of a physics thing, and maybe I can just
 9 explain it to you. A picture helps a little bit.
 10 Q. Okay.
 11 A. If you have a pit, and you bring your
 12 drainpipe in here (indicating), and you have three
 13 feet. Let's say, it's a ten footer. And you have ten
 14 feet here (indicating), down here (indicating), and
 15 your pumps come down and they set basically 11 foot
 16 off the floor, then you have about 11 feet.
 17 MS. WHARRY: 11 inches off the floor?
 18 THE WITNESS: Or, yes, thank you. 11 inches off
 19 the floor. You won't get green water. You'll get
 20 these areas that you can get, but your volumes for
 21 flush water to collect have been diminished.
 22 So that's where you end up going back up
 23 through the drains. As that water stays above this
 24 pipeline, then certainly it goes on that level,
 25 wherever it goes backward. And if you've got water

1 specifically. But if this drain goes into this box
 2 (indicating), then you've got quite a bit trying to
 3 get through one diversion point. That's why I was
 4 going to do it this way (indicating). But, again,
 5 there was no plan or no -- nothing to steer by. And
 6 so Tom is the boss. So if he wants to do it the other
 7 way, then you do it the other way.
 8 Q. Okay. You go on to say there, or to write
 9 in Exhibit 42 that, "I'm assuming Beltman built the
 10 reception pit two foot shorter than talked about."
 11 A. Mm-hmm.
 12 Q. Did you ever talk to Tom about that and tell
 13 him, "You know, I ordered ten foot pumps"?
 14 A. No.
 15 Q. You didn't?
 16 A. I didn't.
 17 Q. Did he ever come to you and say, "How deep
 18 do I need to make that reception pit for your pumps"?
 19 A. He did not.
 20 Q. He did not?
 21 A. No.
 22 Q. We've talked about everything you wrote in
 23 No. 3. We've talked about No. 4.
 24 I don't know. Have we talked about No. 5,
 25 talking about moving the green water from the

1 coming in from this direction (indicating), and you
 2 are not emptying this fast enough, you have a mess.
 3 And that's what happens.
 4 And when you start to slow this velocity
 5 down in this pipe, and you have sand and
 6 sedimentation, which you are going to have anyway,
 7 large accumulations drop out quicker, and you start
 8 filling your pipes up. Any snags in your pipe and you
 9 go back into this diverter box, it will station itself
 10 there.
 11 Q. (BY MR. DINIUS) So you are saying that this
 12 diverter box is going to fill up with sand?
 13 A. It can.
 14 Q. Did you ever see this diverter box fill up
 15 with sand?
 16 A. I did not.
 17 Q. Because it seems to me -- and this entire
 18 free stall, that's a thousand cows; right --
 19 A. Mm-hmm.
 20 Q. -- it drains directly into that diverter
 21 box?
 22 A. It does.
 23 Q. So all the sand from that free stall,
 24 whatever gets tracked into that alley, should be
 25 coming right here (indicating)?

1 A. It will pass through there.
 2 Q. Is it's going to stay -- what is the word
 3 emulsified?
 4 A. In suspension.
 5 Q. Suspension.
 6 A. It depends on velocity and water volume.
 7 Probably, depending again on how much you've got, it
 8 can. But you are going to have to move it seven feet
 9 per second for that to happen. Does it do that there?
 10 No, it won't. Because when it hits that diverter box,
 11 even if it was seven feet a second, and you have
 12 everything just perfect, the aspect of that diverter
 13 box will slow that. At that point, you start to slow
 14 backward.
 15 Q. So there should be some sedimentation
 16 happening, if I understand what you are saying?
 17 A. Depending on where the floor is. I mean, if
 18 you have an opening below you, yeah, it will fill up
 19 full of sand.
 20 Q. We talked before, you don't know how deep
 21 that diverter box is; do you?
 22 A. I do not.
 23 Q. You have here a note that, "DeGroot used to
 24 move the stacker by hitting it with his pickup."
 25 A. Uh-huh.

1 Q. Okay. So this is something that you think
 2 came into your office that your secretary dealt with?
 3 A. I'm sure it came across my desk, and I told
 4 her to send it to Beltman.
 5 Q. Okay. Town & Country was the subcontractor
 6 for you with respect to installing the manure
 7 equipment; right, for the flush system?
 8 A. Yeah. I mean, we do work together. I don't
 9 know if they are a sub to me. I guess I use them.
 10 Q. Okay. And is this for work done at the
 11 DeGroot Dairy?
 12 A. That's what it says.
 13 Q. Okay. It looks like you guys are still --
 14 well, the invoice is dated March 30th of 2000; is that
 15 right?
 16 A. Yes, sir.
 17 Q. So you guys are still working on the project
 18 in March of 2000?
 19 A. Yes, sir.
 20 (Deposition Exhibit No. 44 was marked for
 21 identification.)
 22 Q. (BY MR. DINIUS) Exhibit 44; do you
 23 recognize that?
 24 A. It's a bill from Mike Rice.
 25 Q. To you, or to your company?

1 Q. You saw him do that?
 2 A. I did.
 3 Q. What kind of pickup?
 4 A. He had a little Toyota type pickup, smaller
 5 pickup.
 6 Q. And he'd bump it to move it?
 7 A. Mm-hmm.
 8 Q. And the last note you have in the exhibit is
 9 No. 7. "I would say that if I tested bedding
 10 material, I could still find sand and gravel. It
 11 doesn't just go away." What's the significance of
 12 that?
 13 A. What do you mean?
 14 Q. Why did you write that?
 15 A. Probably just pissy.
 16 (Deposition Exhibit No. 43 was marked for
 17 identification.)
 18 Q. (BY MR. DINIUS) Handing you what's been
 19 marked Exhibit 43. Can you tell me what that is?
 20 A. I cannot.
 21 Q. Do you remember ever receiving this?
 22 A. No.
 23 Q. Whose handwriting is that? It says, "Charge
 24 to Beltman."
 25 A. It's my secretary's.

1 A. Yes, sir.
 2 Q. For work on the DeGroot Dairy?
 3 A. Mm-hmm.
 4 Q. And did you pay that?
 5 A. I did.
 6 Q. Okay. I guess I should have asked you the
 7 same question with respect to that Town & Country
 8 bill. Would you have paid that, or would that have
 9 been something Beltman paid?
 10 A. I would think Beltman would pay it.
 11 Q. Was there any trouble with Beltman paying
 12 you for any of the equipment that we went through all
 13 the invoices for? I mean, did you get paid for all
 14 that?
 15 A. Eventually.
 16 (Deposition Exhibit No. 45 was marked for
 17 identification.)
 18 Q. (BY MR. DINIUS) Handing you what's been
 19 marked Exhibit 45; do you recognize that?
 20 A. I do not.
 21 Q. Do you recognize the handwriting?
 22 A. I do not.
 23 Q. Okay. Who's Bruce Cooper?
 24 A. He's the guy who built the parlor.
 25 MR. DINIUS: It's STCO 0048.

1 **REPORTER'S CERTIFICATE**

2
3 STATE OF IDAHO)
4 County of Ada) ss.

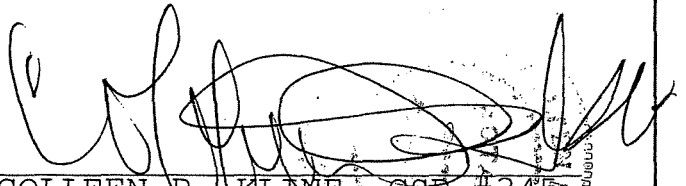

5
6 I, COLLEEN P. KLINE, CSR, a Notary Public in
7 and for the State of Idaho, do hereby certify:

8 That prior to being examined, the witness
9 named in the foregoing deposition was by me duly sworn
10 to testify the truth, the whole truth and nothing but
11 the truth;

12 That said deposition was taken down by me in
13 shorthand at the time and place therein named and
14 thereafter reduced to typewriting, and that the
15 foregoing transcript contains a full, true and
16 verbatim record of the said deposition.

17 I further certify that I have no interest in
18 the event of the action.

19 WITNESS my hand and seal this 21st day of
20 February, 2004.

21
22 
23 COLLEEN P. KLINE, CSR #345
24 Notary Public in and for
25 the State of Idaho. * 

My Commission Expires 8-19-05.



HOULE & FILS INC.
 RTE 143, C.P. 370
 MUMMONDVILLE, QUÉ., CANADA
 J2B 6W3
 TÉL: (819) 477-7444 FAX: (819) 477-0486

BON D'EXPÉDITION
 154226
PACKING SLIP

0058
 STANDLEY TRENCHING INC.
 145 EAST 400 SOUTH
 JEROME
 IDAHO, U.S.A.
 83338
 (208) 324-9449

EXPÉDIE À SHIP TO

JOB: CHUCK DE GROOT

DROP #2

DATE: 1999/11/05	LIVRE PAR: DELIVERED BY: YOUR TRUCK	DATE D'EXPÉDITION: SHIPPING DATE: 19 11 99	COMM. N°: ORDER No.: J.M.	VENDEUR: SALESMAN: MB DP
------------------	-------------------------------------	--	---------------------------	--------------------------

ANTITÉ ANTYTY	N° PIÈCE PART No.	BUREAU OFFICE	DÉTAILS	EXPÉDIÉ SHIP	A VENIR B.O.	VER. P. VER. E
1.00	19-80-1902	1	4" ELECTRIC AGI-POMPE FOR 10' SERIAL NO: # 99-084 WARRANTY: # 11611	1		
2.00	19-80-1904	2	EXTRA PER ADDITIONAL 2' INCREMENT	2		
1.00	19-80-1905	1	EXTRA FOR SLIDING/TILTING PUMP SUPPORT (NO WINCH)	1		
1.00	E19-80-1902		-----INCLUDES THESE ITEMS-----			
1.00	19-77-1245	1	HOLDING BRACKET FOR 4" ELECTRIC AGI-POMPE	1		
1.00	02-43-0007	= /	GREEN PAINT (SPRAY)	1		
1.00	11-47-0280	= /	"WARNING" SIGN	1		
1.00	08-77-0854	= /	PULLEY GUARD (SINGLE MOTOR)	1		
1.00	99-48-3029	1	INSTRUCTION FOR MOTOR INSTALLATION	1		
4.00	08-35-0109	4	"V" BELT B-71	4		
1.00	08-35-0119	1	15.4" PULLEY. "SF" HUB (4 GROOVES)	1		
1.00	08-35-0121	1	HUB FOR PULLEY "SF" 1 3/4"	1		
1.00	08-35-0110	1	HUB FOR PULLEY "SD" 1 7/8"	1		
1.00	08-35-0139	1	"V" PULLEY #4B64 SD BUSTING	1		
1.00	10-76-1210	= /	90 DEGREES ELBOW 6" HOSE<->6" FEM. & C. LOCK CLAMP	1		
1.00	E10-76-1210		-----INCLUDES THESE ITEMS-----			
1.00	10-77-1239	= /	90 DEGREES ELBOW 6" FEM. CIRCLE LOCK TO 6" HOSE	1		
1.00	10-47-0165	= /	6" CIRCLE LOCK CLAMP	1		
4.00	10-39-0038	4	6" RUBBER HOSE GREY (PER/FT) 1 X 4'	4		
2.00	10-76-0557	2	CLAMP FOR 6" HOSE (3/16" TO 5/16" THICK)	2		

+ TRANSPORT

VÉRIFIER FACTURATION

EX NO. 7
 Kurt Standley
 DATE 1-28-04
 ASSOCIATED REPORTING, INC.

HOULE

EX NO. 8
Kurt Standley
 DATE 1-28-04
 ASSOCIATED
 REPORTING, INC.

ORDER - 003

DEALER: STANDLEY TRENCHING

CUSTOMER: CHUCK DE GROOT

QTY	PART NO	DESCRIPTION
1 ✓	19-80-1902	4" ELECTRIC A/C PUMP
1 ✓	19-80-1905	EXTRA FOR SLIDING SUPPORT
2 ✓	19-80-1904	EXTRA PER ADDITIONAL 2'

PUMP FOR 10' DEEP RECEPTION PIT

MOTOR SPECIFICATIONS

30HP

240 VOLT

3 PHASE

286T

1 7/8" SHAFT

1800 RPM

QTY	PART NO.	DESCRIPTION
1 ✓	90° ELBOW w/circle 10-76-1210	90° ELBOW 6" w/circle LOCK
1 ✓	10-39-0038	6" Gray TRANSFER HOSE
2 ✓	10-76-0567 10-76-0567	CLAMPS

REÇU 99 14 Oct. 99 PAR: RP

COMMANDÉ: _____

LIVRAISON: 1 Nov. 99

TÉL.: (819) 477-7444

J. HOULE & FILS INC.
DRUMMONDVILLE QC, J2B 6W3

FAX.: (819) 477-0486



HOULE & FILS INC.
 101 ROUTE 143, C.P. 370
 MUMMONDVILLE, QC, CANADA
 J2B 6W3

TEL.: (819) 477-7444 — FAX: (819) 477-0486

11611

WARRANTY REGISTRATION FORM

EX NO. 9
Kurt Standley
 DATE 7-28-04
 ASSOCIATED
 REPORTING, INC.

Dealer's name: _____

Customer's name: _____

Address: _____

City: _____ Province State: _____ Postal code Zip code: _____

Type of operation: Dairy: _____ Hog _____ Other specify: _____

Type of equipment: _____

Serial #: _____ Model: _____

Serial #: _____ Model: _____

Serial #: _____ Model: _____

Delivery date: _____ Equipment started date: _____

I HEREBY ACKNOWLEDGE THAT:

- all safety decals and protective shielding provided by the manufacturer of the farm implement are in place on the farm implement;
- an operator's manual including all safety related instructions recommended by the manufacturer has been provided;
- I have been instructed on how to operate the equipment;
- the equipment has been assembled and installed as per the company's specifications;
- I have received the company's written warranty.

The installation and/or final assembly of the equipment was performed by: _____ dealer _____ owner

The dealer was present when the equipment was operated the first time: Yes _____ No _____

Dealer's signature: _____

Customer's signature: _____

NOTE: Both dealer and customer signatures must appear on this warranty registration form in order to validate the warranty.

RM PA-00024

WHITE: CUSTOMER — YELLOW: DEALER — PINK & GOLDEN ROD: J. HOULE & FILS INC.



J. HOULE & FILS INC.
 4591 RTE 143, C.P. 370
 DRUMMONDVILLE, QUÉ., CANADA
 J2B 6W3
 TÉL.: (819) 477-7444 FAX: (819) 477-0486

NO FACTURE / INVOICE NO.
 120553

DATE
 JOUR-JAY : MOIS-MONTH | ANNÉE-YEAR
 28 | 10 | 99

NO CLIENT - CUSTOMER NO.
 000058

EX NO. 16
 Kent Standley
 DATE 1-28-09
 ASSOCIATED
 REPORTING, INC.

VENDU À / SOLD TO

EXPÉDIÉ À / SHIP TO

STANDLEY TRENCHING INC.
 145 EAST 400 SOUTH
 JEROME
 IDAHO
 U.S.A.
 83338

CONDITIONS / TERMS
 053/110 DAYS

F.A. or F.O.B.	DATE D'EXPÉDITION / SHIPPING DATE	TAXE DE VENTE PROVINCIALE / PROVINCIAL SALES TAX	T.P.S. / G.S.T.	TERRITOIRE / TERRITORY	VENDEUR / SALESMAN	VIA	NO DU BILLET DE LIVRAISON / PACKING SLIP NO.
	28-10-99		R-102631298	010	000058		071919

NO DU PRODUIT / PRODUCT NO.	DESCRIPTION	QTE COMM. / QTY. ORDERED	QTE EXP. / QTY. SHIP'D	PRIX UNITAIRE / UNIT PRICE	ESC. % / DISC. %	MONTANT / AMOUNT
13-84-1914	Pck. slip 071919 001 CHUCK DEGROOT	1.00	1.00	17850.00	25	13367.50
19-80-1915	SCREEN 8' X 8' WITH BASE FRAME & 6" DISCHARGE ADAPT SN:99-18	1.00	1.00	20325.00	25	15243.75
03-98-1003	ROLLER SEPARATOR WITH MOTOR & 6" DISCHARGE ADAPTOR SN:99-40	1.00	1.00	5442.11		5442.11
	FREIGHT CHARGE					
Net amount due: \$22,323.92 (US fund) if paid before: 07-November-99						

3 MARCHANDISES RETOURNÉES SANS NOTRE PERMISSION NE SERONT PAS ACCEPTÉES. LES MARCHANDISES DÉCRITES SUR CETTE FACTURE DEMEURENT L'ENTIERE PROPRIÉTÉ DE LA CIE JUSQU'À PLEIN PAIEMENT.
 3 MERCHANDISES RETURNED WITHOUT AUTHORIZATION ARE NOT ACCEPTED. ALL MERCHANDISES DESCRIBED ON THIS INVOICE ARE THE PROPERTY OF J. HOULE UNTIL FULL PAYMENT

5 FRAIS D'ADMINISTRATION DE (1.5 %) PAR MOIS (18 %) L'AN) SERONT CHARGÉS SUR CETTE FACTURE APRÈS 30 JOURS DE CETTE DATE.
 5 ADMINISTRATION CHARGES OF (1.5 %) PER MONTH (18 %) ANNUM) WILL BE CHARGED ON THIS INVOICE AFTER 30 DAYS OF BILLING

U	S	A	C	D
SOUS-TOTAL / SUB-TOTAL		\$34073.36		
TRANSPORT				
TOTAL		\$34073.36		
CREDIT				

Exchange rate is 1.4 for a total of \$23498.87



391 RUE 143, C.P. 370
 MUMMONDVILLE, QUÉ., CANADA
 J6W3
 TÉL. (819) 477-7444 FAX: (819) 477-0486

BON D'EXPÉDITION
 071919
PACKING SLIP

Client #000038
 STANLEY TRENCHING INC.
 145 EAST 400 SOUTH
 TERRYVILLE
 IDAHO
 U.S.A. 83338
 (208) 324-9449

108: CHUCK DEGROOT

EXPÉDIE À
 SHIP TO

TE: TE: 99-10-23	LIVRÉ PAR: DELIVERED BY:	DATE D'EXPÉDITION: SHIPPING DATE: 99/10/29	COMM. N°: ORDER No.: 001	VENDEUR: SALESMAN: M. P.
---------------------	-----------------------------	---	-----------------------------	-----------------------------

QTY	PIECE PART NO.	BUREAU OFFICE	DETAILS	EXPÉDIE SHIP	A VENIR B.O.	VER. P VER. E
1.00	* 19-80-1914	/	SCREEN 3' X 8' WITH BASE FRAME & 6" DISCHARGE ADAPTOR Serial No :99-18 Warranty No. 11460	/		1
1.00	19-76-1902	/	SCREEN SEPARATOR BASE	/		2
3.00	09-24-0631	/	HEX. BOLT 1/2-13NC X 4" (Z.P.)	/		3
6.00	07-24-0623	/	HEX. BOLT 1/2-13NC X 4 1/2" GR. 8 (Z.P.)	/		4
24.00	04-26-0507	/	FINISHED HEX. NUT 1/2-13NC GR. 5 (Z.P.)	/		5
14.00	07-27-0001	/	LOCK WASHER 1/2" I.D.	/		6
1.00		/	CHANNEL FOR SCREEN BASE 1 1/2" GA. X 14" X 87 3/4"	/		7
.00		/	RIGHT LEG FOR SCREEN SEPARATOR	/		8
.00		/	LEFT LEG FOR SCREEN SEPARATOR	/		9
.00		/	33 1/2" LEG EXTENSION WITH REINFORCING 18" X 18"	/		10
.00		/	STEEL ANGLE FOR ANCHOR	/		11
.00	04-24-0605	/	HEX. BOLT 1/2-13NC X 1 1/2" (Z.P.)	/		12
.00	04-24-0620	/	HEX. BOLT 1/2-13NC X 2 1/2" (Z.P.)	/		13
.00	04-26-0500	/	FINISHED HEX. NUT 1/2-13NC GR. 5	/		14
.00		/	6" CASTING VALVE WITH SHORT LEVER FLANGE <-> 6" STEEL	/		15
.00	19-77-1385	/	CHAIN FOR LIFTING BAR	/		16
.00		/	STRAIGHT ADAPTOR 8" FEM. C.LOCK + C.LOCK <->	/		17
.00		/	5" WITHOUT RIB	/		18
.00		/	SPECIAL "Y" 6" FEM. C.LOCK + C.LOCK <-> 6" WITH RIB	/		19
.00		/	FLOW CONTROL <-> 6" FLANGE	/		20
.00		/		/		21
.00	* 19-80-1915	/	ROLLER SEPARATOR WITH MOTOR & 6" DISCHARGE ADAPTOR Serial No :99-40 Warranty No. 11460	/		22
.00	19-76-1915	/	90 DEGREES ELBOW 5" FEMALE C.LOCK TO 3" HOSE SHORT MODEL	/		23
.00	19-77-1350	/	LIFTING BAR FOR ROLLER SEPARATOR	/		24
.00	19-37-0067	/	CHAIN 36" FOR LIFTING BAR	/		25
.00		/	OWNER'S MANUAL (19-43-0117)	/		26
.00		/	24" HOPPER	/		27
.00		/	HOPPER COVER	/		28
.00		/	INFORMATION SHEET ON ZIP GUN	/		29

+ TRANSPORT

EX NO. 17
 Kurt Slattery
 DATE 1-28-01
 ASSOCIATED REPORTING, INC.

VÉRIFIER FACTURATION



EX NO. <u>18</u>
<u>Kurt Stanley</u>
DATE <u>1-28-99</u>
ASSOCIATED REPORTING, INC.

ORDER - 001

DEALER: STANLEY TRENCHING
 CUSTOMER: CHUCK DE GROOT

QTY	PART No.	DESCRIPTION
1	19-80-1914	SCREEN 8' X 8' W/ BASE FRAME
1	19-80-1915	Roller SEPARATOR TO SEPARATE WET FIBERS COMING FROM SLOPA SCREEN SEPARATOR

JEFF WILL SEND TO ANSWERS FOR 16 QUESTIONS

Bedding: Compost

Voltage: 240

Phase: 3

When facing the Roller sep
 the elect motor should be on the left.

RECU 99 21 oct. '99 PAR: PP

COMMANDÉ: "

LIVRAISON: 29 oct. '99

TÉL.: (819) 477-7444

J. HOULE & FILS INC.
 DRUMMONDVILLE QC, J2B 6W3

FAX.: (819) 477-0486

HOULE

Troy Huntzbell
100' Summit Creek
SPRINK TO 03338

To: Raymond

From: TROY

RE: 16 QUESTIONNAIRE

RAYMOND

KURT & I WENT TO DEGROOT CONSTRUCTION SITE & MEASURED LAGOONS & BARRS - MET WITH DEGROOT. HE HAS CHANGED HIS MIND ON BUILDING THIRD FACE STILL FOR AT LEAST 2 YEARS. SO NOW WE COULD USE ONE SCREEN & ONE PUMP. WE WILL STILL WANT (2) AIR PUMPS & 2 FLUSH PUMP USING ONE EACH FOR BACK UP

EX NO. 19
Kurt Shouley
DATE 1-28-01
ASSOCIATED
REPORTING, INC.

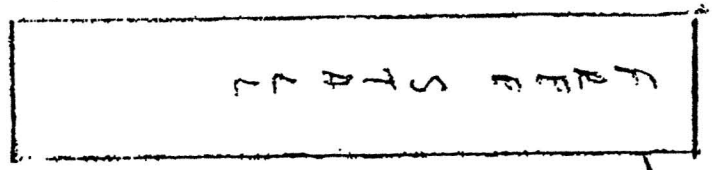
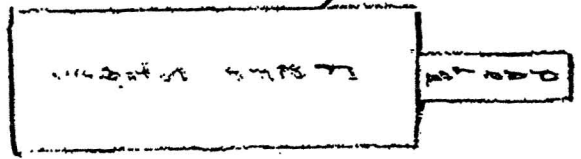
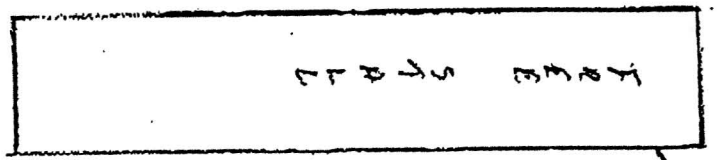
TÉL: (819) 477-7444

J. HOULE & FILS INC.
DRUMMONDVILLE QC, J2B 6W3

FAX: (819) 477-0486

HOULE

EX NO. 20
Controlling
 DATE 1-25-74
 ASSOCIATED
 REPORTING, INC.



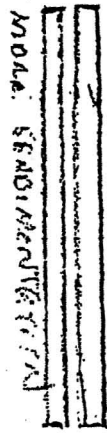
THIS BARN WOULD BE BUILT W/RT 2001

121 AG-1 PUMPS

1) PREDIGESTION CHUTE
 16' x 25' x 4'
 SWITCH VALVE FROM ONE TO THE OTHER



2) 16' x 500' x 10' will USE TO COLLECT MORE SEDIMENTATION



350' x 120' x 8'

USING 2" FIBER BOARD
 1ST STAGE
 Lagoon
 336,000

550' x 1150' x 12'

2" FIBER BOARD
 7,500,000 cu ft
 Main Lagoon

X - FLUSH PUMP EXTRA

EXHIBIT

“I”

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 TROY HARTZELL

January 29, 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. Yes.
 2 Q. It does require -- or does tell you to do a
 3 manure consistency test? Yes?
 4 A. Yes.
 5 Q. And that would take out that variable, would
 6 it not, about how thick the water is or how thick the
 7 manure is that you are trying to pump?
 8 A. No, because you never know where you are
 9 going to be at. I mean, if you are designing a new
 10 dairy, you don't -- you don't get the chance to do the
 11 slump test.
 12 Q. Well, are there any safeguards that you
 13 employed to try and overcome these, what I'll call,
 14 worst-case scenarios in the planning or design phase
 15 of a project?
 16 MR. McCURDY: Objection to form, foundation.
 17 MR. KELLY: Object to the form.
 18 Q. (BY MR. DINIUS) You can answer.
 19 A. Yes.
 20 Q. You know what, maybe this the easiest way to
 21 go at this: Did you have any input or involvement in
 22 determining what size pipe, size pump, and size motor
 23 to employ at the DeGroot Dairy on the flush side of
 24 the system?
 25 MR. McCURDY: Objection to form.

1 said you were involved in. Tell me what your
 2 involvement with that part of the project was.
 3 A. Well, determine that -- what size
 4 horsepower, how far we're pumping to the screens,
 5 and -- and that way you'd determine the horsepower or
 6 have a good idea of what horsepower to use.
 7 Q. Did you actually perform a handwritten
 8 calculation to determine what horsepower you needed on
 9 those four-inch agi pumps?
 10 A. Probably not.
 11 Q. Okay. Do you recall how far the distance
 12 was you were pumping?
 13 A. I was told, yes. I mean, I was told where,
 14 how far, and those --
 15 Q. How far?
 16 A. Oh, it was going to be close to the
 17 reception pit, so a couple hundred feet.
 18 Q. Okay. Then run me through the calculation
 19 that you would employ, then, to determine what
 20 horsepower motor you'd need to have on that
 21 or -- there was actually two of those pumps; right?
 22 A. Yes.
 23 Q. Run me through the calculations that you
 24 would do to arrive at the horsepower required on those
 25 two agi pumps.

1 THE WITNESS: No.
 2 Q. (BY MR. DINIUS) None?
 3 A. I would -- I would say that the only
 4 involvement I had was probably determining the
 5 horsepower of the -- like the agi pumps.
 6 Q. Okay. You didn't have anything to do with
 7 coming up with the specifications for the flush side?
 8 A. No, sir.
 9 Q. Well, that wasn't a very good way to go at
 10 that.
 11 Do you know who determined what
 12 specifica- -- or what type of equipment was going to
 13 be employed on the flush side of the system at the
 14 DeGroot Dairy?
 15 A. Probably Kurt, Kurt Standley.
 16 Q. Are you guessing at that, or do you know?
 17 A. I don't know. I'm guessing at it.
 18 Q. You are guessing?
 19 A. (Witness nodding head.)
 20 Q. "Yes"?
 21 A. Yes.
 22 Q. You need to answer verbally so that she
 23 understands what you are saying.
 24 A. Okay.
 25 Q. Okay. Let's focus on the agi pumps that you

1 A. If they wanted to use a six-inch pipe going
 2 from the pump to the separator and basically, then,
 3 just the elevation difference. And then at the time,
 4 without a lot of information because Houle was
 5 starting, we estimated, and it was a good estimate,
 6 that it was between 4- and 500 gallons a minute the
 7 separator would do. So that's what I wanted to
 8 achieve going to the separator.
 9 Q. Okay. So what size horse motor did you
 10 decide was necessary on the agi pumps in the reception
 11 pit at DeGroot?
 12 A. Probably 30 horsepower.
 13 Q. Do you know that for sure or --
 14 A. No. That's what they normally come up with...
 15 Q. Who is "they"?
 16 A. The dealers or whoever he's working with at
 17 the time.
 18 Q. Will a 30-horsepower motor on one of those
 19 four-inch agi pumps move 500 gallons per minute --
 20 A. Yes.
 21 Q. -- of manure water?
 22 A. Yes.
 23 Q. Okay. Did you at any point conduct a flow
 24 test on the pumps at the DeGroot Dairy to determine
 25 if, in fact, they were moving --

Page 32

1 manure handling system prior to going to work for
2 Houle?

3 A. Yes.

4 Q. And had you done that?

5 A. Yes.

6 Q. And that would include the flush side of
7 it --

8 A. Yes.

9 Q. -- the drain side of it, and the processing
10 side of it?

11 A. Basically the -- the equipment side of it.

12 Q. Okay. Did you ever do any work in
13 sedimentation, cell sizing, or configuration?

14 A. No.

15 Q. Did you do any of that on the DeGroot
16 project?

17 A. No.

18 Q. So back to the flush pump. How did you
19 determine what type of pump to use?

20 MR. McCURDY: Object to the form. Go ahead.

21 MR. KELLY: Go ahead.

22 THE WITNESS: The same thing, what's the
23 pump -- what's the pipe size, elevation, and -- and
24 basically trying to come up with 2,000 to 2,500
25 gallons a minute.

Page 34

1 Q. And when you talk elevation from pump to the
2 furthest valve, are you talking about the elevation of
3 the pump compared to the elevation of the valve?

4 A. Yes.

5 Q. How do you deal with the variable of the
6 pump being a floating pump in a lagoon?

7 A. This --

8 Q. That's going to change the elevation; right?

9 A. Yes.

10 Q. How do you deal with it?

11 A. Well, that's -- that's the difficult part

12 because you -- at the time, the majority of new
13 dairies, you don't really know where the lagoon is
14 going to end up, so -- but if you had -- if you went
15 to a place, I would figure five feet from the lowest
16 part probably. You know, you wouldn't pump all the
17 way down because it's not going to do that, but...

18 Q. Five feet from the lowest what?

19 A. From the bottom of your lagoon.

20 Q. Okay. So you would base your calculation on
21 the pump floating at five feet --

22 A. Yes.

23 Q. -- above the bottom of the lagoon?

24 A. Yes.

25 Q. We've talked about how you do the

Page 33

1 Q. (BY MR. DINIUS) Who selected the pipe size
2 for the DeGroot Dairy on the flush side?

3 A. I do not know.

4 Q. Okay. At some point I'm assuming somebody
5 had to tell you what size flush line was going to be
6 used?

7 A. Yes.

8 Q. Do you know what size flush line was put in
9 at the DeGroot Dairy?

10 A. 12-inch.

11 Q. So you know the pipe size, and your target
12 you've indicated was 2,000, 2,500 gallons per minute
13 at the top of the free stalls to flush with; right?

14 A. Yes.

15 Q. Okay. What elevation do you need to know in
16 order to arrive at the pump size and horsepower
17 requirements of the motor?

18 A. I need to know the elevation from the pump
19 to the -- to the valve, the valve, the top valve.

20 Q. Well, in this case they're -- I mean at
21 Chuck's dairy, there's, what, 16 or twenty- -- 21
22 valves. Which valve do you base your calculations on?

23 A. Probably the last one.

24 Q. The one that's furthest from the pump?

25 A. Yes.

Page 35

1 calculation to figure out the pump size and horsepower
2 requirements in general. Did you employ that method
3 in connection with sizing the pump at the DeGroot
4 Dairy?

5 A. The best I -- with the information, the best
6 I could, yes.

7 Q. Okay. Who provided you the information you
8 needed to size that flush pump?

9 A. Standley's.

10 Q. Who at Standley?

11 A. Well, if I think back, I think a lot of that
12 information even came from Showalter, the guy that was
13 doing the excavation.

14 Q. Okay. How close was the actual location of
15 the lagoon compared to the information that Showalter
16 provided you?

17 A. I can't remember that. I mean, I -- I don't
18 remember how it ended up once -- once we started --

19 Q. Okay.

20 A. -- because most all these places change.

21 Q. Do you have any specific recollection of the
22 DeGroot lagoon changing from what you were told
23 initially to what was actually built?

24 A. I can't remember.

25 Q. Okay. I'm going to hand you what was marked

1 **REPORTER'S CERTIFICATE**

2
3 STATE OF IDAHO)
4 County of Ada) ss.

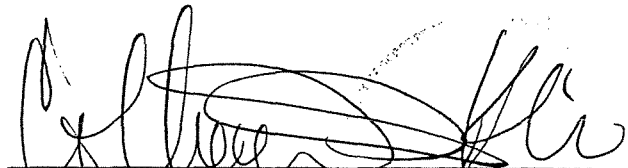
5
6 I, COLLEEN P. KLINE, CSR, a Notary Public in
7 and for the State of Idaho, do hereby certify:

8 That prior to being examined, the witness
9 named in the foregoing deposition was by me duly sworn
10 to testify the truth, the whole truth and nothing but
11 the truth;

12 That said deposition was taken down by me in
13 shorthand at the time and place therein named and
14 thereafter reduced to typewriting, and that the
15 foregoing transcript contains a full, true and
16 verbatim record of the said deposition.

17 I further certify that I have no interest in
18 the event of the action.

19 WITNESS my hand and seal this 23rd day of
20 February, 2004.

21 
22
23 COLLEEN P. KLINE, CSR #345
24 Notary Public in and for
the State of Idaho

25 My Commission Expires 8-19-05.

EXHIBIT
“J”

FOODGED
A.M. P.M.
MAR 18 2004
CANYON COUNTY CLERK
J. MOORE, DEPUTY

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

CASE NO. CV 2001-7777

**PLAINTIFFS' SUPPLEMENTAL
DISCLOSURE OF EXPERT
WITNESSES**

COMES NOW, the Plaintiffs, Charles DeGroot and DeGroot Farms, LLC, by and through their attorney of record, Julie Klein Fischer, of the law firm of WHITE PETERSON, hereby supplements its expert disclosures:


Kenneth E. Hooper, CPA
250 Bobwhite Court, suite 300

Boise, Idaho 83706
(208) 344-2527

Mr. Hooper is a certified public accountant and expected to provide testimony regarding the Plaintiffs economic damages suffered as a result of manure handling system installed and produced by Defendants. Attached hereto and incorporated herein is a copy of Mr. Hooper's report and qualifications, DEGROOT BATES NO. 09651 through 09674.

DATED this 18th day of March, 2004.


WHITE PETERSON

By: 
Kevin E. Dinius, of the Firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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



for WHITE PETERSON

HOOPER CORNELL, P.L.L.C.

250 Bobwhite Court, Suite 300

Boise, ID 83706

(208) 344-2527 Fax (208) 342-0030

Certified Public Accountants

Kenneth E. Hooper, CPA
Grant C. Cornell, CPA
Dennis R. Reinstein, CPA/ABV, ASA, CVA
David A. Hutchison, E.A.

March 16, 2004

Kevin E. Dinius, Esq.
Julie Klein Fischer, Esq.
White Peterson
Attorneys at Law
5700 E. Franklin Road Suite 200
Nampa, ID 83687-7901

Re: Charles DeGroot and DeGroot Farms, LLC versus Kurt Standley, Scott Standley, and Standley Trenching, Inc. dba Standley and Company and J. Houle and Fils, Inc. a Canadian corporation

Dear Mr. Dinius and Ms. Fischer:

In conjunction with our engagement letter dated November 21, 2003, I have evaluated the economic loss suffered by DeGroot Farms, LLC and Mr. Charles DeGroot in the above referenced case as follows:

BACKGROUND

Charles DeGroot and DeGroot Farms, LLC contracted with Beltman Construction, Inc. (Beltman) in the summer of 1999 to build a dairy in the Nampa, Idaho area. Beltman subcontracted the engineering, design, and installation of manure handling equipment to the defendants. Construction continued on the dairy until completion in early April 2000. Dairy cows began to arrive around April 17, 2000, and 1,600 cows were on site by April 30, 2000.

From the start of operations, the manure handling equipment was inadequate, did not function as intended, and hindered the dairy's ability to operate. The system was partially modified in January through February 2001, again in December 2001 through January 2002, and in March 2003. In addition, future improvements were recommended to make the system fully workable.

Kevin E. Dinius, Esq.
Julie Klein Fischer, Esq.
White Peterson
March 16, 2004
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ECONOMIC LOSSES

Economic losses were sustained by Mr. Charles DeGroot and DeGroot Farms, LLC within a range, the lower bound of which includes Items 1 through 6 and the upper bound of which includes Items 2 - 7 as follows:

1. Lost milk revenue due to the inability of the facility to sustain the recommended herd size (Table 2)

Assumptions

- Total cows on site is based on the average number of milking cows divided by the historical percentage of milking cows to total cows.
 - Target herd size based on the average attained between December 2001 and December 2002 of 2,400 head.
 - Herd growth based on a straight-line growth rate from May 2000 to April 2001.
 - Variable cost per hundred weight (CWT) based on the 2002 average cost per CWT adjusted for the years 2000 and 2001, respectively.
 - Purchase cow depreciation is based on a three year productive life.
 - Losses are risk adjusted for risk factors related to the additional cows such as cow health, meeting target production goals, and other general factors.
2. Scraping costs incurred to manually remove manure from the barn area while the system was shutdown for repairs and retrofit (Table 3)

Assumptions

- Tractor cost based on 2004 quote from Schloffman tractor indexed for the year 2000.
- Labor cost based on 2003-2004 labor rate provided by Ernest DeGroot indexed for the year 2000.
- Days scraping in year 2000 provided by Ernest DeGroot. Days scraping in year 2004 based on estimated construction period for future improvements.

Kevin E. Dinius, Esq.
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Page 3

3. Feed loss due to manure backup within the barns (Table 4)

Assumptions

- Cost of spoiled feed based on 2003-2004 price as provided by Ernest DeGroot indexed for the years 2000 through 2002.
- Loss of one ton per week provided by Ernest DeGroot.
- Assumes no loss of feed while DeGroot is manually scraping.

4. System repair costs (Table 5)

5. System improvement costs (Table 6)

6. Future costs to fully repair the system and meet original specifications

7. Lost production due to a lower percentage of milk cows to total herd than expected (Tables 7 and 8)

Assumptions

- Target milking cow percentage of 87% based on calendar year 2002 actual results.

PRESENT VALUE ADJUSTMENT

All dollars have been adjusted to the date of trial assuming a 6.133% return on the invested dollar, which is the average rate of return on three-year Treasury securities for the period 1953 to 2003.

SUMMARY OF LOSSES

Based on the above information and the enclosed tables, I have calculated the present value of losses as of May 2004, as follows:

	<u>Lower Bound</u>	<u>Upper Bound</u>
Milking cow percentage at historical rates (Table 1)	<u>\$ 603,005</u>	
Milking herd percentage at 87% (Table 7)		<u>\$ 691,920</u>

Kevin E. Dinius, Esq.
Julie Klein Fischer, Esq.
White Peterson
March 16, 2004
Page 4

This report may be amended as new information becomes available.

DATA CONSIDERED

1. Production records provided by Ernest DeGroot on January 23, 2004 covering the period May 2001 through December 2002
2. Quickbooks data files provided by Ripley Doorn & Company, P.L.L.C. for the years 2000 through 2003
3. First amended complaint and demand for jury trial dated December 21, 2001
4. Complaint and demand for jury trial dated December 12, 2001
5. Answer to defendants' counter claim dated March 11, 2002
6. Rates of interest and money in capital markets federal reserve system three-year Treasury bills for the period April 1953 through January 2004 dated February 23, 2004
7. T.B. Construction, Inc. bid for future manure removal system improvements received from White Peterson on March 10, 2004
8. U.S. Census Bureau Statistical Abstract of the United States 2003, Chart Number 818 Indexes of Prices Received and Paid by Farmers 1990 to 2002
9. 2003-2004 Daily Labor Rate for costs for scraping as provided by Ernest DeGroot
10. Job Service Report for Southwest Idaho Wage Area Farming, Fishing, and Forestry Workers Classification 45-9099 for the years 1998 through 2003
11. U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index - All Urban Consumers for the period January 1994 through January 2004
12. U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index - Commodities for the period January 1993 through December 2003
13. Depreciation schedules for the years 2001 through 2002 as provided by Ripley Doorn & Company, P.L.L.C., Certified Public Accountants
14. Copies of bills and receipts for the period December 1999 through December 2001

Kevin E. Dinius, Esq.
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15. Binder entitled "Miscellaneous Documents" containing insurance requirements, selected invoices from Beltman Welding and Construction, Standley & Company, Houle Town and Country Electric, Inc., Dairy Services, JDM Construction, Inc., and employee W-4 Statements
16. Northwest Dairy Association EMT remittance advices for the period October 1999 through December 2002
17. Idaho Department of Agriculture, Bureau of Dairy Farm Waste Facility Inspection Reports dated August 13, 2000 and October 2, 2000
18. Deposition of Ernest DeGroot dated November 12, 2003
19. Northwest Dairy Association Month End Quality and Component Reports dated October 1999 through August 2002
20. Dairygold Farms Month End Quality and Component Reports dated July 1992 through January 1995
21. Dairygold Farms Milk Quality Awards, 1992-1993, 1993-1994, 1994-1995, 1998-1999
22. Various notes related to equipment operation and yard maintenance (Bates No. DEGROOT 00813-00825)
23. Cyclus Envirosystems assessment of DeGroot Dairy waste management system dated October 5, 2001
24. Copies of financial statements, tax returns and selected workpapers from the tax return and financial statement files of Ripley Doorn & Company, P.L.L.C. for the years 2001 and 2002
25. Deposition of Charles DeGroot dated October 22, 2002 and January 27, 2004

QUALIFICATIONS

Please refer to my resume at Exhibit 1.

Kevin E. Dinius, Esq.
Julie Klein Fischer, Esq.
White Peterson
March 16, 2004
Page 6

COMPENSATION

Compensation rates range between \$125 and \$205 per hour based on staff utilized and \$205 per hour for deposition and testimony time.

Sincerely,

HOOPER CORNELL, P.L.L.C.

A handwritten signature in black ink, appearing to read 'K. Hooper', is written over the printed name below.

Kenneth E. Hooper, CPA

G:\68593-005\wpdocs\031604 #2 report.wpd
Enclosures

DEGROOT 09656

TABLE 1

DeGroot Dairy, LLC.
TABLE 1-Economic Loss Calculation
May 1, 2000 through May 31, 2004

3 Year Treasury 6.133%
Equity Premium 0.000%
Small Stock Risk 0.000%
Discount Rate 6.133%

Month/Year	Lost Milk			Repairs on Manure Handling System	Costs of Improvements to Manure Handling System	Future Costs to Bring System Up to Original Specifications	Total	Present Value
	Revenue	Scraping Costs	Feed Spoilage					
May-00	\$ 539	\$ -	\$ 282	\$ 2,260	\$ -	\$ -	\$ 3,081	\$ 3,909
Jun-00	950		282	582			1,794	2,265
Jul-00	2,845		282	3,535			6,662	8,370
Aug-00	5,077		282	3,677			9,036	11,295
Sep-00	(8,527)		282	2,503			(5,742)	(7,143)
Oct-00	(9,278)		282	1,159			(7,837)	(9,700)
Nov-00	1,110		282	1,899	3,500		6,791	8,365
Dec-00	4,622		282	1,892	3,483		10,379	12,720
Jan-01	5,797	4,648	68 ^a	1,748	3,000		15,261	18,611
Feb-01	8,826		293	-	-		9,119	11,065
Mar-01	12,186		293	5,504	3,000		20,983	25,336
Apr-01	15,050		293	20,579	-		35,922	43,159
May-01	13,698		293	1,829	-		15,920	19,033
Jun-01	12,905		293	1,605	-		14,703	17,491
Jul-01	17,493		293	4,360	-		22,148	26,215
Aug-01	19,104		293	793	5,000		25,190	29,671
Sep-01	15,475		293	3,840	4,500		24,108	28,255
Oct-01	9,690		293	858	-		10,841	12,643
Nov-01	6,188		293	3,764	25,000		35,245	40,900
Dec-01	-		293	1,356	-		1,649	1,904
Jan-02	-		303	7,557	-		7,860	9,031
Feb-02	-		303	39,703	78,557		118,563	135,555
Mar-02	-		303	1,677	-		1,980	2,253
Apr-02	-		303	1,274	-		1,577	1,785
May-02	-		303	171	7,072		7,546	8,500
Jun-02	-		303	1,169	-		1,472	1,650
Jul-02	-		303	737	-		1,040	1,160
Aug-02	-		303	-	-		303	336
Sep-02	-		303	-	-		303	335
Oct-02	-		303	84	-		387	425
Nov-02	-		303	513	-		816	892
Dec-02	-		303	1,277	-		1,580	1,719
Jan-03	-		303	-	-		303	328
Feb-03	-		303	-	-		303	326
Mar-03	-		303	-	-		303	325
Apr-03	-		303	-	-		303	323
May-03	-		303	-	-		303	322
Jun-03	-		303	1,513	-		1,816	1,918
Jul-03	-		303	-	-		303	318
Aug-03	-		303	-	-		303	317
Sep-03	-		303	1,689	-		1,992	2,073
Oct-03	-		303	-	-		303	314
Nov-03	-		303	171	-		474	488
Dec-03	-		303	-	-		303	311
Jan-04	-		303	3,792	-		4,095	4,177
Feb-04	-		303	-	-		303	308
Mar-04	-		303	-	-		303	306
Apr-04	-		303	-	-		303	305
May-04	-	6,793	-	-	-	115,750	122,543	122,543
Total	\$ 133,650	\$ 11,441	\$ 14,031	\$ 125,251	\$ 133,112	\$ 115,750	\$ 533,235	\$ 603,005

^a One week of lost feed

TABLE 2

DeGroot Dairy, LLC
 Monthly Production Analysis
 Table 2 - Lost Milk Revenue

DATE	CALCULATED HISTORICAL							ECONOMIC LOSS										
	MONTHLY PRODUCTION PER MW DAIRY REPORTS	MONTHLY AVG # TOTAL COWS ON SITE	MONTHLY AVG # MILKING COWS	% OF MILKING COWS TO TOTAL	AVG MONTHLY PROD. PER COW	AVG PROD. PER DAY/COW	EXPECTED MILKING COW CAPACITY	EXPECTED TOTAL COW CAPACITY	CUMULATIVE COW DEFICIENCY	PRODUCTION DEFICIENCY	BLENDED PRICE/CWT	LOST REVENUE PER CWT	VARIABLE COST PER CWT	DEPREC. PER CWT	TOTAL COSTS	LOST NET INCOME	RISK ADJUSTMENT OF 5%	RISK ADJUSTED LOST NET INCOME
May-00	2,989,790	1,839	1,341 e	82%	2,229.15	71.91	1,367 c	1,667	25	59,720	10.44	6,922	(8.06)	(1.38)	(5,354)	568	5%	839
June-00	3,021,340	1,708	1,401 e	82%	2,157.24	71.91	1,421 c	1,733	21	44,815	11.67	5,230	(8.06)	(1.38)	(4,230)	1,000	5%	950
July-00	3,142,790	1,719	1,410 e	82%	2,229.15	71.91	1,478 c	1,800	96	147,480	11.47	16,914	(8.06)	(1.38)	(13,918)	2,995	5%	2,845
August-00	3,154,000	1,725	1,416 e	82%	2,229.15	71.91	1,531 c	1,867	118	258,080	11.51	29,705	(8.06)	(1.38)	(24,381)	5,344	5%	5,077
September-00	3,596,260	2,033	1,667 e	82%	2,157.24	71.91	1,585 c	1,933	(82)	(176,318)	11.77	(20,753)	(8.06)	(1.38)	11,777	(8,978)	5%	(8,527)
October-00	3,856,810	2,111	1,731 e	82%	2,229.15	71.91	1,640 c	2,000	(91)	(203,010)	11.49	(23,326)	(8.06)	(1.38)	13,559	(9,766)	5%	(9,276)
November-00	3,596,560	2,034	1,698 e	82%	2,157.24	71.91	1,695 c	2,067	27	57,240	11.48	6,571	(8.06)	(1.38)	(5,403)	1,168	5%	1,110
December-00	3,789,360	1,998	1,640	82%	2,318.88	74.73	1,749 c	2,133	109	253,291	11.38	29,774	(8.06)	(1.38)	(23,906)	4,865	5%	4,622
January-01	3,694,520	1,993	1,654 b	83%	2,227.64	71.66	1,828 c	2,200	172	383,154	11.38	43,603	(8.41)	(1.38)	(37,501)	6,102	5%	5,797
February-01	3,281,460	1,993	1,654 b	83%	1,971.86	70.42	1,681 c	2,267	227	446,270	11.66	53,165	(8.41)	(1.38)	(43,674)	9,290	5%	8,826
March-01	3,767,140	1,993	1,654 b	83%	2,277.59	73.47	1,937 c	2,333	283	643,800	11.76	75,840	(8.41)	(1.38)	(63,912)	12,928	5%	12,186
April-01	3,801,540	1,993	1,654 b	83%	2,177.47	72.58	1,992 d	2,400	338	735,966	11.94	87,877	(8.41)	(1.38)	(72,034)	15,842	5%	15,050
May-01	3,594,860	2,011	1,689	83%	2,153.90	69.49	1,992	2,400	323	696,710	11.66	82,511	(8.41)	(1.38)	(68,662)	14,419	5%	13,686
June-01	3,360,140	1,975	1,639	83%	2,050.12	68.34	1,992	2,400	353	723,691	11.85	84,310	(8.41)	(1.38)	(70,831)	13,470	5%	12,805
July-01	3,502,280	1,955	1,623	83%	2,157.91	69.61	1,992	2,400	369	796,267	12.10	96,348	(8.41)	(1.38)	(77,934)	16,414	5%	17,493
August-01	3,832,400	2,018	1,675	83%	2,266.44	73.81	1,992	2,400	317	725,286	12.56	91,097	(8.41)	(1.38)	(70,989)	20,109	5%	19,104
September-01	3,977,600	2,114	1,755	83%	2,266.44	75.55	1,992	2,400	237	537,146	12.82	68,882	(8.41)	(1.38)	(52,573)	16,289	5%	15,475
October-01	4,034,320	2,184	1,821	83%	2,215.44	71.47	1,992	2,400	171	378,841	12.48	47,270	(8.41)	(1.38)	(37,079)	10,200	5%	9,660
November-01	4,077,960	2,240	1,859	83%	2,193.63	73.12	1,992	2,400	133	291,763	12.02	35,060	(8.41)	(1.38)	(28,555)	6,513	5%	6,188
										<u>6,796,194</u>		<u>814,998</u>		<u>(674,315)</u>	<u>140,693</u>		<u>133,650</u>	

- a Total number of cows on site per Ernest DeGroot deposition
- b Average between December 2000 and May 2001 (1669+1640)/2
- c Maximum capacity of milking cows projected to grow evenly over 12 months.
- d Maximum capacity based on 2400 x % milking.
- e Average number of milking cows derived from the average production per day/cow from the period of May 2001 through December 2002

Risk Adjustment	
Excess Hospitalized Milking Cows	2%
Below Target Milk Production	2%
Other	1%
Total	5%

TABLE 3

Degroot Dairy, LLC
TABLE 3 - Scraping Costs
Labor and Machinery Rental Calculation

Information provided by: Schloffman Tractor
(208)-376-3333
90 Horsepower Tractor Rental

2004 COST OF RENTAL:

Cost per h.p. hour \$ 18.20
Additional cost of maintenance \$ 450

Cost per hour adjusted to year 2000 based on CPI-U

<u>Year</u>	<u>Cost</u>	<u>Index</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
2003	\$18.20	2.279%	\$15.84		
2002	\$15.84	1.581%		\$15.59	
2001	\$15.59	2.846%			\$15.18
2000	\$15.18				

Additional cost of maintenance adjusted to year 2000 based on CPI-U

<u>Year</u>	<u>Cost</u>	<u>Index</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
2003	\$450	2.279%	\$439.97		
2002	\$440	1.581%		\$433.12	
2001	\$433	2.846%			\$421.13
2000	\$421				



2003 COST OF LABOR:

Wage per hour \$ 8.33 (Based on \$75 per day rate-per Ernest DeGroot)
Hours per day 9
Days worked 21
Total labor 1,575
Total 2000 cost of labor \$ 1,575

Cost adjusted to year 2000 based on: Southwest Idaho Wage History

<u>Year</u>	<u>Cost</u>	<u>Index</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
2003	\$1,575	11.93%	\$1,407		
2002	\$1,407	6.86%		\$1,317	
2001	\$1,317	4.08%			\$1,265
2000	\$1,265				



ADJUSTED 2000 CUMULATIVE COST:

Labor \$ 1,265
Payroll taxes (7.65 % of labor) 97
Tractor rental (\$15.18 per hour x 9 hours x 21 days) 2,865
Additional cost of maintenance 421
Total additional cost of scraping manure \$ 4,648

TOTAL 2004 COSTS:

Labor (\$75 x 28 days) \$ 2,100
Payroll taxes (7.65 % of labor) 161
Tractor rental (\$18.20 x 9 hours x 28 days) 4,082
Additional cost of maintenance 450
Total additional cost of scraping manure \$ 6,793

TABLE 4

Degroot Dalry, LLC
TABLE 4 - Feed Spoilage

Cost per ton	\$	70	(Information provided by Ernest Degroot)
Tons lost per week		1	
Total spoilage per week	\$	<u>70</u>	
Total spoilage per year	\$	3,640	
Total spoilage per month	\$	303	

**Cost adjusted based on: U.S. Census Bureau, Statistical Abstract of the United States:
2003 No. 818. Indexes of Prices Received and Paid by Farmers 1990 to 2002.**

<u>Year</u>	<u>Cost</u>	<u>Index</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
2004	\$303		\$303			
2003	\$303			\$303		
2002	\$303	3.670%			\$293	
2001	\$293	3.863%				\$282
2000	\$282					

TABLE 5

Degroot Dairy, LLC
TABLE 5 - Repairs on Manure Handling System

Date	Beltman Construction	Cyclus Envirosystems	JDM Construction	Roto Rooter	Spudnik	Standley & Co.	Town & Country Electric	Total
Jun-00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,182	\$ 78	\$ 2,260
Jul-00							562	562
Aug-00					1,406		2,129	3,535
Sep-00					257		3,420	3,677
Oct-00				225	773	1,505		2,503
Nov-00				225			934	1,159
Dec-00					667		1,233	1,899
Jan-01				314	349		1,329	1,992
Feb-01				350	265		1,133	1,748
Mar-01								-
Apr-01							5,504	5,504
May-01						20,260 (a)	319	20,579
Jun-01							1,929	1,929
Jul-01				1,605				1,605
Aug-01		2,000					2,360	4,360
Sep-01				620			173	793
Oct-01		3,556					284	3,840
Nov-01				275			583	858
Dec-01				790			2,974	3,764
Jan-02				1,225			131	1,356
Feb-02			7,078	250			229	7,557
Mar-02			7,078				32,625	39,703
Apr-02				400			1,277	1,677
May-02				550			724	1,274
Jun-02							171	171
Jul-02				400			769	1,169
Aug-02							737	737
Sep-02								-
Oct-02								-
Nov-02							84	84
Dec-02				275			238	513
Jan-03							1,277	1,277
Feb-03								-
Mar-03								-
Apr-03								-
May-03								-
Jun-03								-
Jul-03							1,513	1,513
Aug-03								-
Sep-03								-
Oct-03							1,689	1,689
Nov-03								-
Dec-03							171	171
Jan-04								-
Feb-04	3,792							3,792
Mar-04								-
Apr-04								-
May-04								-
	<u>\$ 3,792</u>	<u>\$ 5,556</u>	<u>\$ 14,156</u>	<u>\$ 7,504</u>	<u>\$ 3,716</u>	<u>\$ 23,947</u>	<u>\$ 66,580</u>	<u>\$ 125,251</u>

(a) NOTE: Unpaid repairs

TABLE 6

Degroot Dairy, LLC
TABLE 6 - Cost of Improvements to Manure Handling System

<u>Date</u>	<u>Beltman Welding and Construction</u>	<u>Standley & Co.</u>	<u>Total</u>
Nov-00	\$ -	\$ 3,500	\$ 3,500
Dec-00		3,483	3,483
Jan-01		3,000	3,000
Feb-01			-
Mar-01		3,000	3,000
Apr-01			-
May-01			-
Jun-01			-
Jul-01			-
Aug-01	5,000		5,000
Sep-01	4,500		4,500
Oct-01			-
Nov-01	25,000		25,000
Dec-01			-
Jan-02			-
Feb-02	78,557		78,557
Mar-02			-
Apr-02			-
May-02	7,072		7,072
Jun-02			-
Jul-02			-
Aug-02			-
Sep-02			-
Oct-02			-
Nov-02			-
Dec-02			-
	<u>\$ 120,129</u>	<u>\$ 12,983</u>	<u>\$ 133,112</u>

TABLE 7

DeGroot Dairy, LLC.
TABLE 7-Economic Loss Calculation at 87%
May 1, 2000 through May 31, 2004

3 Year Treasury	6.133%
Equity Premium	0.000%
Small Stock Risk	0.000%
Discount Rate	6.133%

Month/Year	Lost Milk			Costs of			Total	Present Value
	Revenue	Scraping Costs	Feed Spoilage	Repairs on Manure Handling System	Improvements to Manure Handling System	Future Costs to Bring System Up to Original Specifications		
May-00	\$ 789	\$ -	\$ 282	\$ 2,260	\$ -	\$ -	\$ 3,341	\$ 4,239
Jun-00	1,429		282	562			2,273	2,870
Jul-00	3,775		282	3,535			7,582	9,538
Aug-00	6,509		282	3,677			10,468	13,065
Sep-00	(6,375)		282	2,503			(3,590)	(4,466)
Oct-00	(6,774)		282	1,159			(5,393)	(6,601)
Nov-00	2,402		282	1,899	3,500		8,083	9,956
Dec-00	6,677		282	1,992	3,483		12,434	15,238
Jan-01	7,247	4,648	68	1,748	3,000		16,711	20,379
Feb-01	10,622		293	-	-		10,915	13,245
Mar-01	14,747		293	5,504	3,000		23,544	28,428
Apr-01	22,108		293	20,579	-		42,980	51,639
May-01	20,427		293	1,929	-		22,649	27,077
Jun-01	18,998		293	1,605	-		20,896	24,858
Jul-01	24,989		293	4,360	-		29,652	35,100
Aug-01	27,672		293	793	5,000		33,758	39,762
Sep-01	23,965		293	3,840	4,500		32,598	38,206
Oct-01	16,873		293	858	-		18,024	21,020
Nov-01	12,134		293	3,764	25,000		41,191	47,800
Dec-01	-		293	1,356	-		1,649	1,904
Jan-02	-		303	7,557	-		7,860	9,031
Feb-02	-		303	39,703	78,557		118,563	135,655
Mar-02	-		303	1,677	-		1,980	2,253
Apr-02	-		303	1,274	-		1,577	1,785
May-02	-		303	171	7,072		7,546	8,500
Jun-02	-		303	1,169	-		1,472	1,650
Jul-02	-		303	737	-		1,040	1,160
Aug-02	-		303	-	-		303	336
Sep-02	-		303	-	-		303	335
Oct-02	-		303	84	-		387	425
Nov-02	-		303	513	-		816	892
Dec-02	-		303	1,277	-		1,680	1,719
Jan-03	-		303	-	-		303	328
Feb-03	-		303	-	-		303	326
Mar-03	-		303	-	-		303	325
Apr-03	-		303	-	-		303	323
May-03	-		303	-	-		303	322
Jun-03	-		303	1,513	-		1,816	1,918
Jul-03	-		303	-	-		303	318
Aug-03	-		303	-	-		303	317
Sep-03	-		303	1,689	-		1,992	2,073
Oct-03	-		303	-	-		303	314
Nov-03	-		303	171	-		474	488
Dec-03	-		303	-	-		303	311
Jan-04	-		303	3,792	-		4,095	4,177
Feb-04	-		303	-	-		303	308
Mar-04	-		303	-	-		303	306
Apr-04	-		303	-	-		303	305
May-04	-	6,793	-	-	-	115,750	122,543	122,543
Total	\$ 208,234	\$ 11,441	\$ 14,031	\$ 125,251	\$ 133,112	\$ 115,750	\$ 607,819	\$ 691,920

a One week of lost feed

TABLE 8

DATE	CALCULATED HISTORICAL						ECONOMIC LOSS												
	MONTHLY PRODUCTION PER NW DAIRY REPORTS	MONTHLY AVG # TOTAL COWS ON SITE	MONTHLY AVG # MILKING COWS	% OF MILKING COWS TO TOTAL	AVG MONTHLY PROD. PER COW	EXPECTED MILKING COW CAPACITY	EXPECTED TOTAL COW CAPACITY	CUMULATIVE COW DEFICIENCY	PRODUCTION DEFICIENCY	BLENDED PRICE CWT	LOST REVENUE PER CWT	VARIABLE COST PER CWT	DEPREC. PER CWT	TOTAL COSTS	LOST NET INCOME	RISK ADJUSTMENT OF 6%	RISK ADJUSTED LOST NET INCOME		
May-00	2,969,780	1,638	1,341 e	87%	2,229.15	71.91	1,370 c	1,987	29	84,151	10.44	8,097	(8.08)	(1.07)	(5,856)	841	5%	799	
June-00	3,021,340	1,708	1,401 e	87%	2,157.24	71.91	1,428 c	1,733	27	59,197	11.67	8,908	(8.08)	(1.07)	(5,404)	1,504	5%	1,429	
July-00	3,142,790	1,719	1,410 e	87%	2,229.15	71.91	1,488 c	1,800	78	169,752	11.47	18,471	(8.08)	(1.07)	(15,497)	3,874	5%	3,775	
August-00	3,154,000	1,725	1,415 e	87%	2,229.15	71.91	1,544 c	1,987	129	287,802	11.51	33,129	(8.08)	(1.07)	(26,274)	8,852	5%	8,509	
September-00	3,598,260	2,033	1,667 e	87%	2,157.24	71.91	1,602 c	1,933	(65)	(140,364)	11.77	(16,821)	(8.08)	1.07	9,810	(6,711)	5%	(8,375)	
October-00	3,858,810	2,111	1,731 e	87%	2,229.15	71.91	1,680 c	2,000	(71)	(158,427)	11.49	(18,203)	(8.08)	1.07	11,073	(7,130)	5%	(8,774)	
November-00	3,598,560	2,034	1,668 e	87%	2,157.24	71.91	1,718 c	2,087	50	107,578	11.48	12,350	(8.08)	(1.07)	(9,821)	2,529	5%	2,402	
December-00	3,799,360	1,998	1,640	87%	2,316.88	74.73	1,778 c	2,133	138	315,089	11.38	35,792	(8.08)	(1.07)	(28,783)	7,029	5%	6,877	
January-01	3,684,520	1,963	1,654 b	87%	2,227.64	71.86	1,834 c	2,200	180	400,878	11.38	45,831	(8.41)	(1.07)	(38,002)	7,829	5%	7,247	
February-01	3,281,460	1,993	1,654 b	87%	1,971.88	70.42	1,892 c	2,267	238	489,303	11.88	55,959	(8.41)	(1.07)	(44,478)	11,181	5%	10,822	
March-01	3,787,140	1,993	1,654 b	87%	2,277.59	73.47	1,950 c	2,333	298	674,168	11.78	79,417	(8.41)	(1.07)	(63,894)	15,523	5%	14,747	
Apr-01	3,601,540	1,993	1,654 b	87%	2,177.47	72.68	2,088 d	2,400	434	945,023	11.94	112,838	(8.41)	(1.07)	(98,584)	23,271	5%	22,108	
May-01	3,594,880	2,011	1,669	87%	2,153.80	68.48	2,088	2,400	419	902,484	11.88	107,085	(8.41)	(1.07)	(95,533)	21,502	5%	20,427	
June-01	3,360,140	1,975	1,639	87%	2,050.12	68.34	2,088	2,400	449	820,502	11.85	107,238	(8.41)	(1.07)	(97,240)	19,998	5%	18,998	
July-01	3,502,280	1,955	1,623	87%	2,157.91	69.81	2,088	2,400	485	1,003,428	12.10	121,415	(8.41)	(1.07)	(95,098)	26,315	5%	24,990	
August-01	3,632,400	2,018	1,675	87%	2,288.00	73.81	2,088	2,400	413	944,944	12.56	118,885	(8.41)	(1.07)	(99,557)	29,128	5%	27,872	
September-01	3,977,800	2,114	1,755	87%	2,266.44	75.55	2,088	2,400	333	754,724	12.82	96,758	(8.41)	(1.07)	(71,529)	25,227	5%	23,965	
October-01	4,034,320	2,194	1,821	87%	2,215.44	71.47	2,088	2,400	287	591,523	12.48	73,822	(8.41)	(1.07)	(56,061)	17,781	5%	16,873	
November-01	4,077,960	2,240 f	1,859	87%	2,193.63	73.12	2,088	2,400	229	502,241	12.92	66,381	(8.41)	(1.07)	(47,809)	12,772	5%	12,134	
										<u>8,814,171</u>		<u>1,058,495</u>			<u>(636,301)</u>	<u>216,194</u>		<u>208,294</u>	

- a Total number of cows on site per Ernest DeGroot deposition
- b Average between December 2000 and May 2001 (1669+1840)/2
- c Maximum capacity of milking cows projected to grow evenly over 12 months.
- d Maximum capacity based on 2400 x % milking.
- e Average number of milking cows derived from the average production per day/cow from the period of May 2001 through December 2002

Risk Adjustment	
Excess Hospitalized Milking Cows	2%
Below Target Milk Production	2%
Other	1%
Total	5%

EXHIBIT 1

Business Background

Hooper Cornell, P.L.L.C., 1986 to Present, Senior Partner.

Experience

Over 20 years of experience in public practice including audit, tax and accounting and consulting services. Areas of emphasis are healthcare and business consulting, tax, and litigation support services. Litigation experience includes:

Health Care: Forensic accounting, cost reporting, random non-statistical and statistically valid reviews of claims populations for both government and non-government payers, compliance investigations, self reporting to government agencies, risk assessments, contractual dispute mediations and arbitrations, and settlement negotiations with federal agencies.

Business Losses: Analysis of losses related to contractual disputes, lender liability, insurance loss, and business interruption for a variety of businesses and investors.

Bankruptcy Accounting: Accounting and tax services, negotiations with secured and unsecured creditors, and investigations of bankruptcy violations.

Personal Injury and Wrongful Death: Present value calculations of lost future earnings, household services, and personal consumption.

Testimony Experience: Testified, deposed, or consulted on approximately one hundred cases in both State and Federal courts.

Educational Background

San Francisco State University, Bachelor of Business with an emphasis in Accounting, June 1976. Certified in the states of Idaho and Washington.

Qualifications

Member of the American Institute of Certified Public Accountants as well as the Idaho Society of Certified Public Accountants. Associate member of the American Health Lawyers Association, Healthcare Financial Management Association, National Association of Home Care, National Association of Forensic Economists, Association of Certified Fraud Examiners, and Medical Group Management Association.

Lectured on various healthcare subjects to state associations as well as the National Association for Home Care. Participated in a panel discussion with the American Bar Association concerning health care fraud. Instructed various classes on individual and corporate taxes and forensic accounting.

EXHIBIT
“K”

Assessment of Degroot Dairy

Waste Management System

October 5, 2001

Introduction

Chuck Degroot currently operates a 2500±-milk cow dairy on Melmont Road in southern Canyon County, Idaho, several miles north of the Snake River. The dairy was built in 2000. Since the beginning of operations the dairy has had difficulties operating its waste treatment system. The screens have not worked properly. A portion of the screen system had to be removed from service.

Although the dairy has just begun operations odor complaints have been filed with the Idaho Agricultural Department. Animal disease and flies exceed normal operating conditions. Because of the problems Chuck Degroot hired Tom Storm of Dairy Services to review the design and develop a new design that would operate properly.



The Degroot Dairy (Summer 2001)

Mr. Degroot requested that Cyclus EnviroSystems assess the original design and the Dairy Service design to determine if inadequacies existed in either case. This report presents our assessment.

Permit Conditions

The DeGroot dairy was originally permitted for 2250 milk cows and 500 dry cows. The facility was permitted for a total of 2750 cows having an average weight of 1400 pounds. The dairy is currently operating with less than 1800 cows. The permit anticipated all animals being confined in freestall barns. Animal bedding was to be obtained from composted manure solids. The original permit anticipated manure production to be approximately 38,000 gallons per day. An additional 27,400 gallons per day was expected to be produced from the milk parlor.

Site Layout

The DeGroot dairy has three freestall barns with open corrals adjacent to each barn. The center barn is 500 feet long by 100 feet in width. The two end barns are 100 feet wide by 1000 feet in length. The larger barns have a capacity to house 1000 milk cows. Each barn has four flush lanes. A total of 10 flush lanes have been installed (four in each of the end barns and two in the center barn). The barns have a 1 percent slope from the flush valve to the drain gutter.



Center and North Dairy Barns

Waste Volume

Wastewater is obtained from three sources. Those sources are the parlor wash water, manure and urine from the cows, and flush water from the storage pond.

The parlor wash water and cooling water are transported from the parlor to the waste drain through a 15-inch pipe. The original intent was to deliver all plate cooling water to the cow drinking water system. A significant portion of the plate cooling water is discharged to the drain due to inadequate controls at the water storage tank. The permit anticipated that approximately 27,000 gallons per day would be discharged from the milk parlor. The current discharge is approximately 50,000 gallons per day.



Flush Lane Manure

At full capacity the manure and urine flow will be approximately 38,000 gallons per day. Since the dairy is not at full capacity the current manure flow is approximately 30,000 gallons per day.

Each of the 10 alleys is currently flushed six times a day. The flush rate is approximately 1,800 gallons per minute. The duration of the flush is three minutes. The flush water is obtained from the flush pump located in the storage pond. The water is pumped from the flush pump through an eight inch hose and then through a 12 inch line to the 12 inch flush valves located at the beginning of each of the 10 flush lanes.

Waste Treatment Process

Figure 1 shows the current waste handling system.

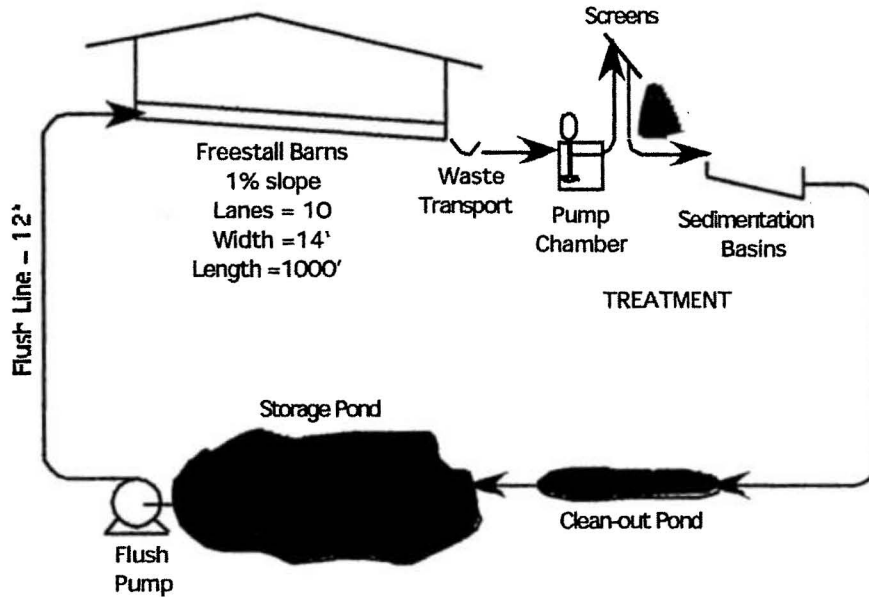


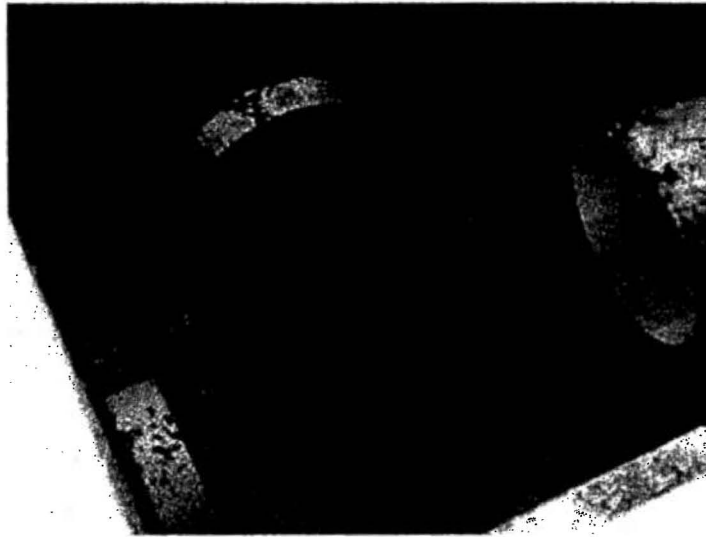
Figure 1 Waste Handling System Schematic

The flush water is pumped through an existing 12 inch PVC line to the freestall barns. The flush water is then collected in a gutter/drain system and transported to a pump chamber.



Manure Collection Gutter

The drainpipe is a 15 inch diameter PVC drain line. The drainpipe has a slope of 0.5 percent at the center and north freestall barns and a 0.7 percent slope for the southern freestall barn. The drainpipe flows directly into the pump chamber from the southern freestall barn. Wastewater from the milk parlor, center free stall barn, and northern free stall barn flows into a rectangular catch basin and then to the pump chamber.



Catch Basin showing Parlor Flow

From the pump chamber the waste is pumped to two screens. The solids from the screens discharge on a slab that drains to the sedimentation basins. The liquid from the screens is also discharged to the two sedimentation basins. The solids are removed periodically by front-end loader from the sedimentation basins. The wastewater leaves the sedimentation basins through small rectangular outlets on the side of each basin. The wastewater then flows through a long narrow pond prior to discharge into the storage pond. The long narrow pond can be cleaned with a track excavator on a periodic basis.

Dairy Services recommended that the existing waste treatment process be replaced with the process shown in Figure 2. The proposed system will use a new flush pump with a greater capacity than the existing flush pump. The new flush pump will be installed in a chamber immediately after the sedimentation basins. Only excess water, equal to the parlor wash water and the liquid manure flow, will be discharged to the storage ponds. Flush water will be pumped to the free stall barns without entering the storage ponds. The revised system will also incorporate a sand trap prior to the pump chamber. The existing screens will be replaced with a screw press.

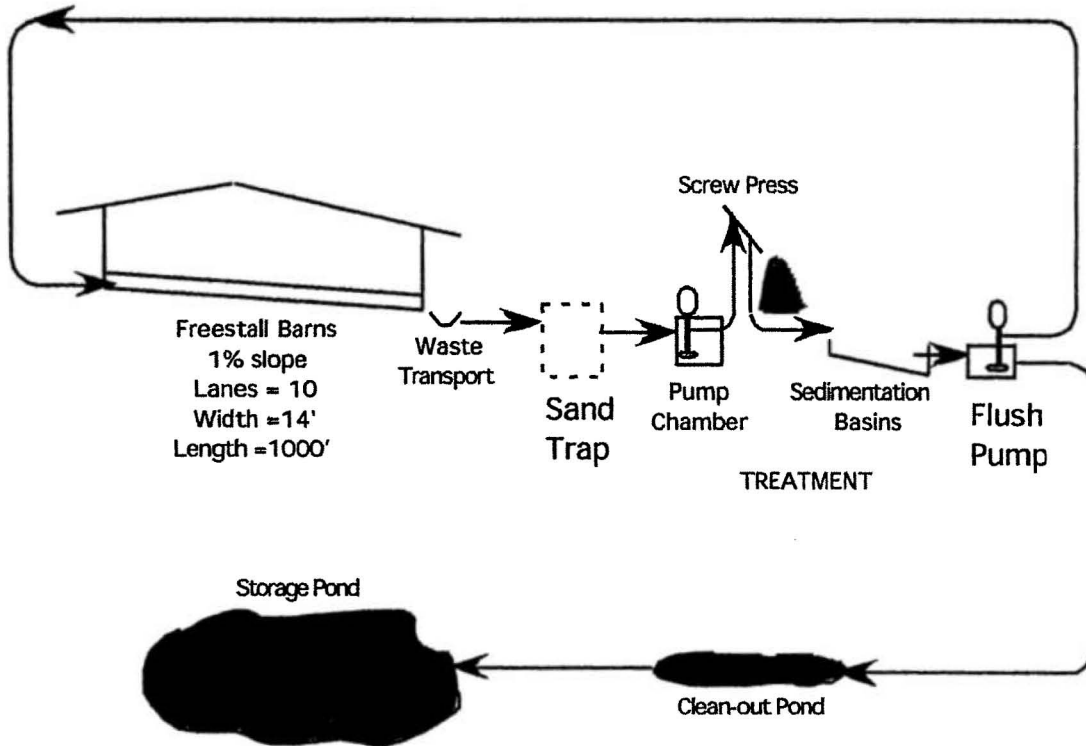


Figure 2, Revised Waste Processing System

Assessment of Existing and Proposed Design

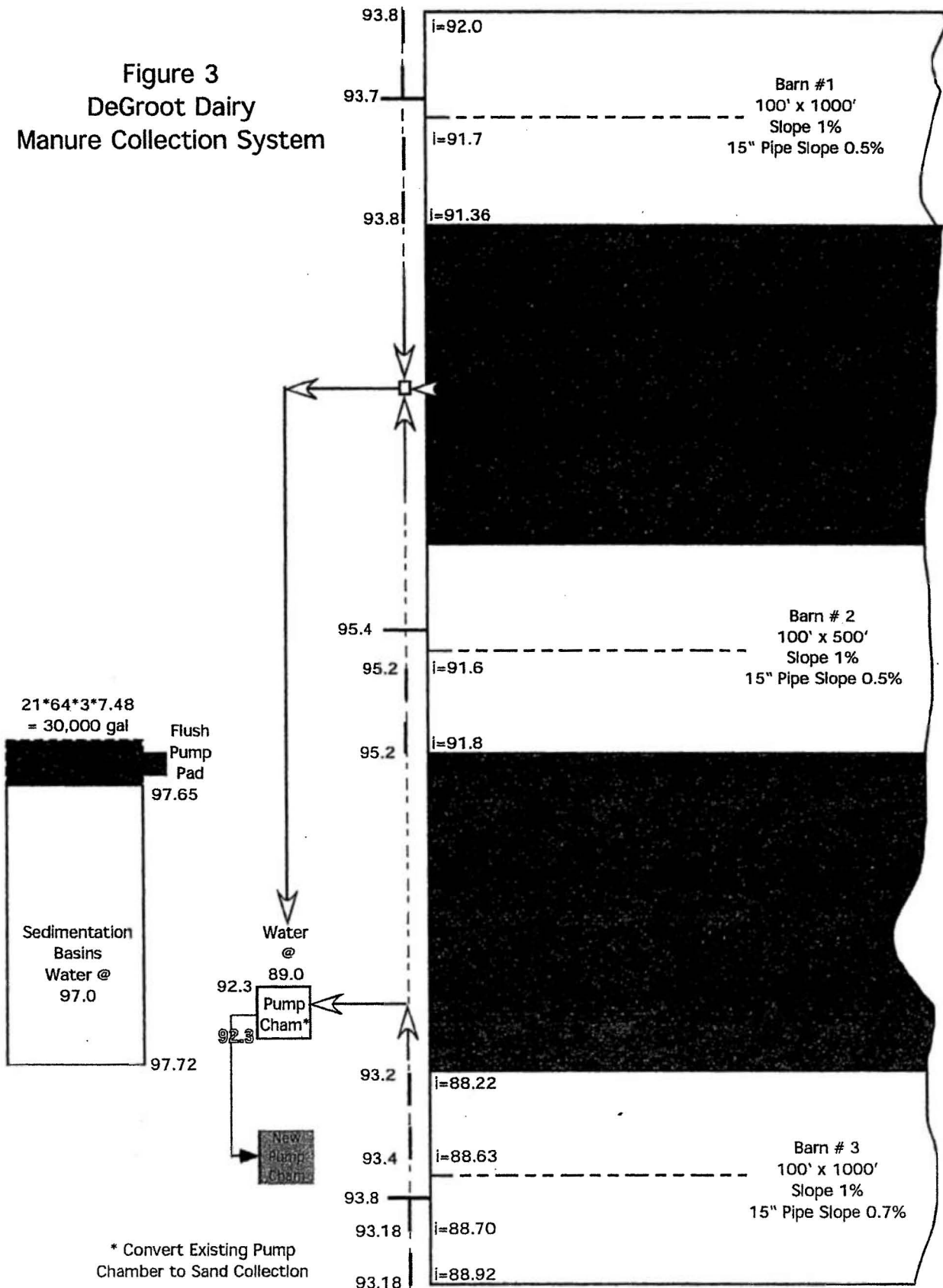
There are no design drawings or calculations justifying the existing design. Although we requested plans, hydraulic calculations, and equipment specifications including pump curves, none were available. Consequently, we surveyed the portion of the site to establish the free stall barn slope and the depth and configuration of the drain system. The survey results are presented in Figure 3.

Flush Rates

The existing flush pump delivers only a fraction of the volume required to clean the free stall barns. It is my understanding that an independent consulting firm established that the maximum flush volume produced by the existing flush pump was less than 1800 gallons per minute. That rate of flow is not sufficient to flush barns having a 1 percent slope with 14-foot wide by 1000-foot long flush lanes.

Dairy services proposed 3,000 gallons per minute flush pump. The pump would be operated for three minutes twice a day. The size of the flush pump was based on the paper by James Moore recommending a flush flow of 175 gallons per

Figure 3
DeGroot Dairy
Manure Collection System



* Convert Existing Pump Chamber to Sand Collection

minute per foot of flush lane width. The 2,450 gallons per minute flow rate was based on the 1982 paper by Ronald Hermanson of Washington State University. The rate was established for a two percent flush lane slope. In his 1985 paper Ronald Hermanson recommended a 0.5-gallon per square foot flush flow. The total flush volume required for each 1000 foot by 14-foot lane would be approximately 19,250 gallons. If the flush duration were 3.5 minutes twice a day the required rate of flow would be 2,750 gallons per minute. The rate or duration should be increased for a shallow slope less than 2%.

My discussions with a number of dairy operators who are operating similar flush systems has established that most will flush at a rate equal or exceeding 4,000 gallons per minute for duration of three to six minutes twice a day. Consequently, it is my recommendation that each flush lane be flushed twice a day for 3.5 minutes at a minimum rate of 3000 gallons per minute. The total flush volume will be 21,000 gallons per lane per day, or 210,000 gallons per day for all lanes. The existing flush system uses 32,400 gallons per lane per day. Consequently, less water and energy will be used in the proposed system. However, the proposed system will provide twice the energy per flush as the existing system. The additional energy should be sufficient to clean the flush lanes.

Waste Transport System

The flush water is collected in rectangular drains at the end of each flush lane. The drains discharge into slots cut into the top of 15 inch PVC pipe. At several locations the PVC pipe has separated from the concrete drain. As a result, waste can be discharged directly into groundwater or sand and gravel can be washed into the waste water system.

The 15-inch PVC pipe conveys the waste to the pump chamber. Unfortunately, the 15-inch pipe discharges below the surface of the water in the pump chamber. As a result, water and waste solids are backed up in the 15-inch pipe and rectangular drain. Over time, the solids accumulate and eventually clog the pipe. The drain system uses 90-degree elbows rather than manholes at all pipe changes in direction. The lack of manholes makes line cleaning and maintenance extremely difficult.

The 15-inch drainpipe is installed at a 0.5 percent grade. A 15-inch PVC pipe with an "n" value of 0.012 will transport a maximum rate of flow of 2,250 gallons per minute. The rate of flow is less than the recommended flush flow rate. An 18-inch pipe would be the appropriate size to use.

All dairy manure contains significant quantities of sand. The sand is blown into the barns and incorporated into the compost bedding in the compost operation. Most dairies install sand traps prior to the pump chamber to minimize wear on the pumps, mixers, and screens. The existing system does not incorporate a

sand trap prior to the pump chamber. Dairy Services has proposed to install a sand trap prior to the pump chamber. This is an appropriate recommendation.

Pump Chamber

The invert of the 15-inch drainpipe is approximately three feet above the bottom of the 8 foot deep pump chamber. As a result the pump chamber only provides 1.5 ft. of storage, or 12,000 gallons.



Waste Pump Chamber Being Mixed

The pump chamber must store 10,500 gallons from each flush. The pump must remove 10,500 gallons each hour to provide room for the subsequent flush. The minimum rate to waste removal from the sump through the screen will be 175 gallons per minute. The size of the existing pump chamber appears to be adequate, provided that the liquid level controls maintain a maximum liquid level below the invert of the 15-inch drain line.

Waste Pump and Screens

The existing pumps and screens do not have sufficient capacity to handle 200 gallons per minute of waste flow. The existing screens are simply not adequate to screen the manure. The screens are not protected from the weather and will freeze during the winter. Consequently, it is recommended that the screens and waste solids pump be replaced. Dairy Services has recommended a screw press to replace the screens. The screw press will have a rated capacity of 200

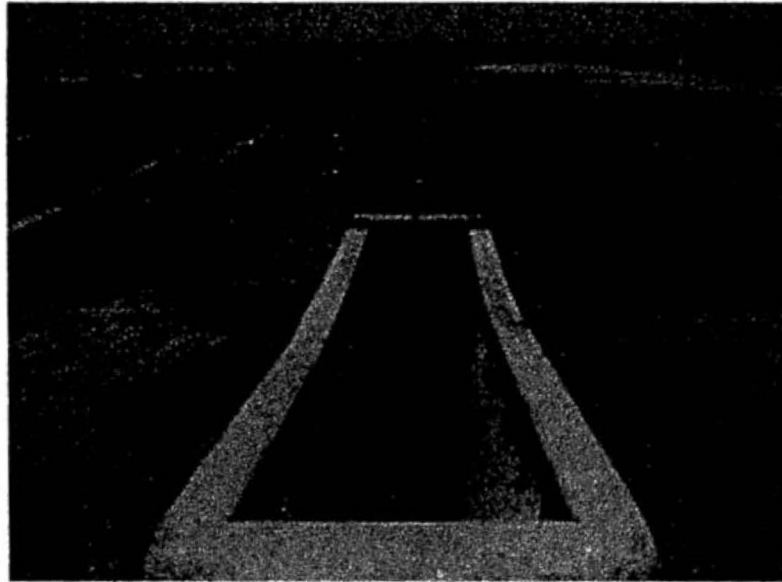
gallons per minute. At least two screw presses should be provided in an enclosed heated building.

Waste Piping

The pipeline from the pump chamber to the screens has failed in a number of locations. Because of screen inadequacies and drainage problems the embankment adjacent to the screens has eroded and must be stabilize. It is recommended that the existing waste piping be removed.

Sedimentation Basins

The existing sedimentation basins appear to be adequate.



Existing Sedimentation Basins

The effluent boxes should be baffled to prevent floating solids from discharging to the detention pond. Significant quantities of floating manure have been observed discharging from the sedimentation chamber to the effluent boxes.

Flush Pump Installation

The existing flush pump is installed in the storage pond. All flush water is discharged to the pond and subsequently recycled to the dairy barns. Suspended solids present in the flush water will eventually settle in the ponds,

which have a long detention time. The settled solids will eventually decay and create odor problems. Reducing the flow to the ponds can reduce the quantity of waste material discharged to the ponds. Installing the flush pump adjacent to the sedimentation basins can eliminate eighty percent of the existing flow to the ponds. Reducing the flow to the ponds by eighty percent will reduce the odor causing solids that are discharged to the ponds by an equal percentage. Significant energy savings will also be achieved since the flush pump will be located at a much higher elevation. The pressure required to deliver the flush flow will be significantly reduced.



Channel and Storage Pond

Dairy Services has recommended that the new flush pump meeting the flush requirements be installed in a separate chamber adjacent to the sedimentation basins. The basins should have a liquid holding capacity for two flush cycles (two hours) or 21,000 gallons.

Immediate Improvements

It is recommended that the new flush pump and flush pump chamber be installed immediately. (See figure 3) The existing waste pump system and screens should be replaced with a new pump system and a new screw press. The existing waste pump chamber should be converted to a sand sedimentation basin. The new waste solids pumps should be installed in a basin of equal area and a depth of 12 feet rather than eight. These improvements must be completed prior to freezing weather.

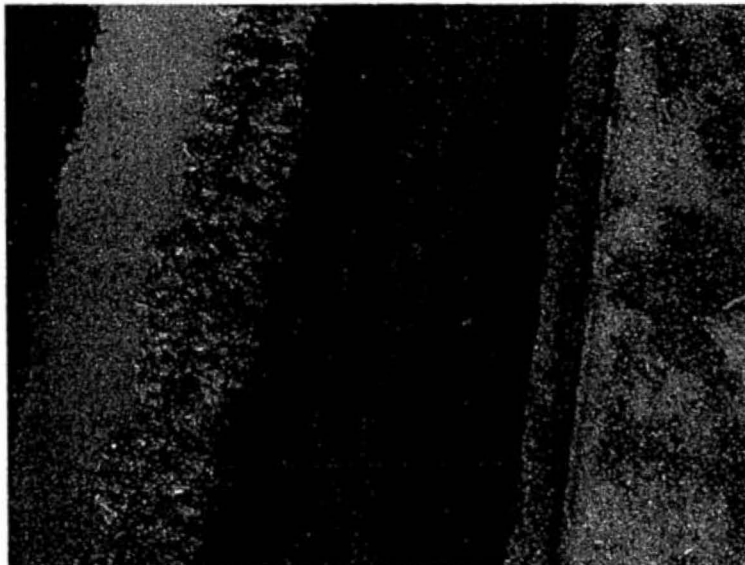
Future Improvements

After the new flush system is installed an assessment of the capacity of the wastewater collection system must be made. In all likelihood the existing collection system will be inadequate. The existing 15-inch pipe should be replaced with an 18-inch pipe. In addition the waste collection lines can be installed at a higher elevation resulting in additional storage capacity.

An additional screw press should be installed as a backup for the proposed screw press.

In addition, the following repair should be made:

- Repair the existing drainpipe where it has separated from the concrete drain.
- Manholes should be installed at all pipe bends.
- Surface skimming baffles installed at the sedimentation basin discharge.
- Adequate drainage should be installed around the solids storage slab.
- Earth embankment adjacent to the screens should be graded and stabilized.
- All sumps and open below ground chambers should have adequate guardrails, handrails, or fences around them.
- All pipe penetrations through walls should be flush cut with the wall
- All concrete that has been undermined because of improper drainage should be replaced and the surrounding ground graded for drainage.
- The plate cooling water controls should be repaired to reduce the loss of warm freshwater.



Drain Pipe Separation from Concrete



Broken Concrete at Drain

EXHIBIT
“L”

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 Kevin E. Dinius, ISB #5974
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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,)	CASE NO. CV 2001-7777
-vs-)	PLAINTIFFS' RESPONSES TO
KURT STANDLEY, SCOTT STANDLEY and STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., and J. HOULE & FILS, INC., a Canadian corporation;)	DEFENDANT J. HOULE & FILS, INC.'S INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS
Defendants.)	Dated: August 1, 2002

COMES NOW, Plaintiffs, by and through their attorneys of record, the law firm of White Peterson, hereby respond to Defendant J. Houle & Fils, Inc.'s Interrogatories and Requests for Production to Plaintiffs as follows:

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
 INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 1**

PREFATORY STATEMENT

Investigation, discovery, and trial preparation in this action has not yet been completed. As discovery proceeds, witnesses, facts, information, contentions and evidence may be discovered that are not set forth in these responses, but which may have been responsive to these interrogatories. However, these responses are complete to the Plaintiffs' best knowledge at this time. These responses are subject to correction for inadvertent errors or omissions, if any. Furthermore, these responses are based upon the records and information presently available to Plaintiffs. Facts and evidence now known may be imperfectly understood in the relevance and consequences of such facts, and evidence may, in good faith, not be included in the following responses.

Plaintiffs reserve the right to refer to, to conduct discovery with reference to, or to offer into evidence at the time of trial, any and all such witnesses, facts, contentions, information and evidenced developed during the course of this discovery and trial preparation, notwithstanding the evidence or references to witnesses, facts, contentions, information and evidence in these responses.

INTERROGATORY NO. 1: Please state the name, address and telephone number of each and every person known to you or your attorneys who has any knowledge of, or who purports to have any knowledge of any of the facts of this case, and, for each, state the relevant facts which you understand to be within the knowledge of such person. By this Interrogatory we seek the names, addresses and telephone numbers of all witnesses who have any knowledge of any fact pertinent to damages and/or liability and the relevant facts which you understand to be within the knowledge of such person.

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 2**

RESPONSE NO. 1: As discovery is ongoing, Plaintiff may not yet have identified all persons with knowledge of the facts of this case. However, the following individuals have been identified:

- * Charles DeGroot, Plaintiff;
- * Kurt Standley, Defendant;
- * Agents and employees of Defendant, Standley;
- * Troy Hartsell, address and phone unknown;
- * Jim Heatherington, Address and phone unknown;
- * Jim Griggs, Address and phone unknown;
- * Earnest DeGroot;
- * Dave Stubbs, Agrilines Irrigation, 115 N. 2dn Street, Parma, ID 83660,
(208) 722-5121;
- * Stan Beltman, address unknown, (509) 839-2099;
- * Dean Morrison, address and phone unknown;
- * Tom Storm, Dairy Services, 205 Evans, Caldwell, ID 83605,
(208) 459-0680;
- * Dennis Burke, Cyclus Envirosystems, 6007 Hill Road, NE, Olympia
Washington 98516. (360) 923-2000;
- * Dan Reed, Idaho Power Company.

INTERROGATORY NO. 2: Please state the names, addresses and telephone numbers of all persons you intend to call as factual witnesses at the trial of this case.

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 3**

RESPONSE NO. 2: As discovery is ongoing, Plaintiffs do not yet know who they may call as factual witnesses at the trial of this matter. However, Plaintiffs may call any of the individuals identified in the Answer to Interrogatory No. 1; any Defendant; any agent, representative or employee of any Defendant; and any witnesses identified by any party to this action through discovery.

INTERROGATORY NO. 3: With respect to the persons you intend to call at the trial of this case, please state the general nature of the facts to which they will testify.

RESPONSE NO. 3: Please see Answer to Interrogatory No. 1.

Charles DeGroot. Mr. DeGroot will testify consistent with the allegations in his complaint.

Ernest DeGroot. Ernest DeGroot manages the DeGroot Dairy and will testify consistent with the Plaintiff's allegations in the Complaint.

Stan Beltman. Mr. Beltman was the general contractor for construction of the DeGroot Dairy. Mr. Beltman is expected to testify regarding the difficulty he faced working with Standley, the quality and effectiveness of the work performed by Standley, the amounts paid to Standley for their services, and the effect of Standley abandoning the DeGroot project prior to completion.

Dean Morrison. Mr. Morrison completed the work that Standley had been hired to perform at the DeGroot Dairy when Standley abandoned the project prior to completion.

Tom Storm. Mr. Storm has knowledge of the defective and ineffective system installed by Standley. Mr. Storm will testify regarding the need to replace the existing equipment that was non-functional.

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 4**

Dan Reed. Mr. Reed works for Idaho Power and will testify about the pumps and pumping systems, wiring therefore, and efforts undertaken by Plaintiffs to improve pressure in the flush systems.

INTERROGATORY NO. 4: State the name and address of each person whom you expect to call as an expert witness at the trial, and for each such person, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify.

RESPONSE NO. 4: As discovery is ongoing Plaintiffs have not yet identified each person they may call as an expert in the trial of this matter. Plaintiffs will fully disclose all experts, including a summary of their qualifications and background at such time as is ordered by the Court. Plaintiffs may call any of the following as experts:

Dave Stubbs. Mr. Stubbs is an owner of Agrilines Irrigation in Parma, Idaho and may testify regarding the capacity of the pumping systems installed by Standley.

Dennis Burke. Mr. Burke may testify regarding the design of the Standley system installed at the DeGroot Dairy. Mr. Burke also may offer opinions regarding the fitness of the Houle equipment.

INTERROGATORY NO. 5: For each person you expect to call as an expert witness, state in capsule summary the qualifications and background of the individual.

RESPONSE NO. 5: Please see Answer to Interrogatory No. 4.

INTERROGATORY NO. 6: Please identify in full and complete detail each and every document, writing or other physical evidence which you intend to offer as an exhibit in the trial of this matter.

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 5**

RESPONSE NO. 6: As discovery is ongoing Plaintiffs have not yet identified trial exhibits. However, Plaintiff may introduce any of the following:

- * Photographs taken of the manure handling systems, dairy operation and non-operational Houle equipment.
- * Any blue prints or designs of the dairy waste system.
- * Receipts, invoices and statements for repair and replacement work done to the DeGroot Dairy manure handling system manufactured by Defendant Houle and installed by Defendant Standley, including without limitation documents showing expenses for electrical, excavation, plumbing and redesign work.
- * Veterinarian bills and or statements.
- * Invoices and statements submitted to Stan Beltman and/or Plaintiffs for work, services, parts and equipment provided by Defendant Standley.

INTERROGATORY NO. 7: Please identify each and every statement, oral or written, made by any employee, agent, or representative of any of the Defendants other than given in discovery proceedings, which relates to any of the issues involved in this action.

RESPONSE NO. 7: Plaintiffs object to this Interrogatory No. 7 as overbroad and burdensome. Defendants had agents, employees and representatives on the Plaintiffs' dairy project for months at a time. Accordingly, it would be impossible to identify and describe all of the conversations occurring between the parties that relate to this lawsuit.

INTERROGATORY NO. 8: Please set forth in detail a full and complete itemization of all special damages claimed by you in this action.

RESPONSE NO. 8: Plaintiffs are continuing to itemize special damages, as they have continued to be incurred during the replacement of the Standley/Houle waste disposal system. The requested information will be supplied shortly as the replacement system is near completion.

INTERROGATORY NO. 9: If, prior or subsequent to the matters which form the subject the name and address of each and every court wherein said complaint was filed, denote the names of the parties to said proceedings, the number assigned to the particular litigation, and state generally what that litigation consisted of and the disposition thereof.

RESPONSE NO. 9: Plaintiffs object to this Interrogatory No. 9 as it requests information outside the scope of permissible discovery, and which information would not likely lead to discoverable evidence. Without waiving said objection, Plaintiffs state that they have not previously been parties in any criminal or civil lawsuits.

INTERROGATORY NO. 10: Have you entered into a release, settlement, agreement, compromise, covenant or any other type of agreement with any person, firm or corporation as a result of the matters referred to in your Complaint? If so, please set forth the name and address of the person, firm or corporation, the type of agreement or instrument by which you compromised, settled or released any claims, the date thereof, and the amount of consideration received by you for the same.

RESPONSE NO. 10: Plaintiffs have entered into no agreements regarding the matters referred to in the Complaint.

INTERROGATORY NO. 11: Is there an insurance agreement under which any person carrying on an insurance business was liable to satisfy part or all of your claims? If so, please fully describe said insurance agreement, including, but not limited to, the name of the insurance

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 7**

company issuing said policy, the policy number, the effective coverage dates, the name insured of the policy, the type of the policy, i.e., liability, etc., the applicable policy limits, and whether there is any contention by the insurance company or any of its representatives that there was no coverage under the policy. If there is such a contention, please state the nature of the contention and by whom the contention is being made.

RESPONSE NO. 11: To the Plaintiffs best knowledge no insurance coverage is available to Plaintiffs regarding Plaintiffs' claims.

INTERROGATORY NO. 12: With respect to Paragraph 32 of your First Amended Complaint, please set forth all facts which prove or tend to prove your allegation that "[t]he 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."

RESPONSE NO. 12: Please see Plaintiffs' Complaint. In addition, copies of the demand letters sent to Standley, which generally outline the Plaintiffs' position regarding the design, insufficiency, and malfunctioning of the equipment and system are attached.

INTERROGATORY NO. 13: With respect to the allegation of Paragraph 36 of your First Amended Complaint that the equipment manufactured by Defendant Houle was defective, as to each item, please state the specific defect that you allege was present, the exact manner in which each alleged defect proximately caused or otherwise contributed to your alleged damages, and the name and address of each and every individual who claims to have knowledge of said defect.

RESPONSE NO. 13: Plaintiffs object to this interrogatory as overbroad and burdensome since Plaintiffs undertook months of repair, renovation of the system before ultimately replacing the same. Without waiving said objection, please see Answer to Interrogatory No. 14 below.

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 8**

The itemization of repair and renovation to be provided will include an explanation of the defective equipment replaced.

INTERROGATORY NO. 14: With respect to Paragraph 37 of your First Amended Complaint, please itemize all efforts undertaken by you, and the associated costs, to modify and renovate the purportedly “defective/insufficient manure handling equipment in an attempt to make the same operational.”

RESPONSE NO. 14: Please see Complaint. In addition, the costs to fully renovate the system are not yet fully determined as some of the replacement work has just recently been completed. Plaintiffs will supplement this Answer when a complete itemization is complete.

INTERROGATORY NO. 15: With respect to Paragraph 46 of your First Amended Complaint, please set forth all facts which prove or tend to prove your allegations that “[t]he equipment manufactured and designed by Houle. .. is insufficient for managing and disposing of manure from a 2,000 head dairy operation.”

RESPONSE NO. 15: Please see answer to Interrogatory No. 12.

INTERROGATORY NO. 16: With respect to Paragraph 48 of your First Amended Complaint, please set forth all facts which prove or tend to prove your allegations that “[t]he equipment manufactured by Defendant Houle “does not function or operate as intended and is not merchantable.”

RESPONSE NO. 16: Please see Answer to Interrogatory No. 12.

INTERROGATORY NO. 17: With respect to Paragraph 51 of your First Amended Complaint, please set forth all facts which prove or tend to prove your allegation that Defendant Houle breached the implied warranty of fitness for a particular purpose pursuant to Idaho

**PLAINTIFFS’ RESPONSES TO DEFENDANT J. HOULE & FILS, INC.’S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 9**

Commercial Code § 28-2-315.

RESPONSE NO. 17: Please see Answer to Interrogatory No. 12.

INTERROGATORY NO. 18: With respect to Paragraph 52 of your First Amended Complaint, please set forth all facts which prove or tend to prove your allegation that Defendant Houle breached the implied warranty of merchant ability pursuant to Idaho Commercial Code § 28-2-314.

RESPONSE NO. 18: Please see Answer to Interrogatory No. 12.

INTERROGATORY NO. 19: With respect to Paragraph 54 of your First Amended Complaint, please set forth all facts which support your contention that “Defendant Houle, by holding out its product 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.”

RESPONSE NO. 19: Please see Answer to Interrogatory No. 12.

INTERROGATORY NO. 20: With respect to Paragraph 66 of your First Amended Complaint, please set forth all facts which support your allegations that “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.”

RESPONSE NO. 20: Plaintiffs object to this Interrogatory No. 20 to the extent it calls for an explanation of Plaintiffs legal theories. Without waiving said objection, please see Answer to Interrogatory No. 12.

INTERROGATORY NO. 21: If you contend that the Defendants or any of their agents or

**PLAINTIFFS’ RESPONSES TO DEFENDANT J. HOULE & FILS, INC.’S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 10**

employees have at any time made any admissions against interest with regard to the matters referred to in your First Amended Complaint or any matter connected therewith, please state the name of the person making the admission, the name and address of the person(s) to whom the admission was made, and the substance of the admission.

RESPONSE NO. 21: Plaintiffs object to this Interrogatory No. 21 as overbroad as the parties had numerous conversations, some of which may have included statements that could be deemed admissions. Without waiving said objection, Plaintiffs state that Kurt Standley's agreement to refund the cost of the conveyor/stacker was a form of an admission.

INTERROGATORY NO. 22: Please describe how the manure handling equipment was operated, stating for each operation the proper sequence of steps, which actions were required by the operator for each step, and who informed you or your employees as to how the equipment was to be operated.

RESPONSE NO. 22: Generally, the manure handling system was to operate in the following sequence:

- * Flush pump from lagoon pumps water to barns and flushes the alleys
- * Water and solids empty into a collection pit
- * From the pit the water is pumped over screens
- * Solids are separated from the water by screens and moved through a mechanical press
- * The pressed solids fall onto a conveyor and are dropped into a pile

Although Standley advised Ernest DeGroot (just prior to the start up) that it would prepare written instructions (in Spanish and English) regarding usage and service of the system,

**PLAINTIFFS' RESPONSES TO DEFENDANT J. HOULE & FILS, INC.'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION TO PLAINTIFFS - 11**

no such instruction was provided. Standley also promised to offer support regarding proper servicing and maintenance, but failed to do so.

INTERROGATORY NO. 23: As to all instructions or warnings given to you or your employees, either written or verbal, regarding the use of the subject equipment, please state:

- a) The time when each such warning or instruction was given;
- b) The name of the person(s) giving such warning; and
- c) A description of the content of each such warning or instruction.


RESPONSE NO. 23: Please see Answer to Interrogatory No. 22.

INTERROGATORY NO. 24: Please give the names and addresses of all person who were operating or supervising your operation of the subject manure handling equipment during all periods of its alleged inadequacy/defectiveness.

RESPONSE NO. 24: Ernest DeGroot primarily was responsible for operation and management of the manure handling equipment at the DeGroot Dairy. Ernest DeGroot is the DeGroot Dairy manager.

DATED this _____ day of August, 2002.

WHITE PETERSON

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

CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of August, 2002, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

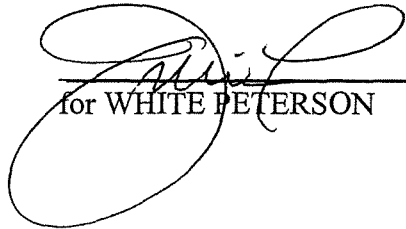
_____ US Mail

No.208/733-3619

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

 _____ Facsimile
No.344-7077

William A. McCurdy
BRASSEY WETHERELL
P.O. Box 1009
Boise, ID 83701-1009


_____ for WHITE PETERSON

WHITE PETERSON

WHITE, PETERSON, MORROW, GIGRAY, ROSSMAN, NYE & ROSSMAN, P.A.

KEVIN DINIUS
JULIE KLEIN FISCHER
WM. F. GIGRAY, III
T. GUY HALLAM*
D. SAMUEL JOHNSON
WILLIAM A. MORROW
WILLIAM F. NICHOLS*
CHRISTOPHER S. NYE

PHILIP A. PETERSON
ERICA S. PHILLIPS
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MERIDIAN, IDAHO 83680-1150
TEL. (208) 288-2499
FAX (208) 288-1193

PLEASE REPLY TO
NAMPA OFFICE

*Also admitted in OR
** Also admitted in WA

August 1, 2002

FACSIMILE TRANSMISSION

To: William A. McCurdy
BRASSEY WETHERELL
P.O. Box 1009
Boise, ID 83701-1009

Fax No. 344-7077

From: Julie Klein Fischer/cm
Phone: 208-466-9272

You should receive 14 pages of copy including this cover sheet.

RE: DeGroot v. Standley

Please find attached:

1. Plaintiffs' Responses to Defendant J. Houle & Fils, Inc.'s Interrogatories and Request for Production to Plaintiffs;
2. Notice of Service of a Discovery Document.

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WHITE, PETERSON, MORROW, GIGRAY, ROSSMAN, NYE & ROSSMAN, P.A.

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*Also admitted in OR
** Also admitted in WA

August 1, 2002

FACSIMILE TRANSMISSION

To: Kevin F. Trainor
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Post Office Box 83
Twin Falls, ID 83303-0083

Fax No. 208-733-3619

From: Julie Klein Fischer/cm
Phone: 208-466-9272

You should receive 14 pages of copy including this cover sheet.

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FAX (208) 288-2501

PLEASE REPLY TO
NAMPA OFFICE

*ALSO ADMITTED IN OR
**ALSO ADMITTED IN WA

June 18, 2001

Facsimile Transmission 732-6184

Mr. Kurt Standley
Standley & Company
P.O. Box 14
Twin Falls, Idaho 83303-0014

Re: *DeGroot Dairy*

Dear Mr. Standley:

We represent Chuck DeGroot and DeGroot Dairy, LLC, regarding the dispute with Standley & Company over the engineering and installation of the manure handling system at the DeGroot Dairy. As you undoubtedly are aware, the system engineered and installed by your company is not working as envisioned or warranted. Several post-installation modifications have been implemented in an attempt to make the system functional. However, all attempts have failed because the system, as designed, is not adequate for the size of the DeGroot Dairy. Therefore, I take this opportunity to outline Mr. DeGroot's position and expectations.

Initially, Stan Beltman, the general contractor for the DeGroot Dairy construction project, hired Standley to engineer and install the manure handling system for a 2000 cow dairy operation. Standley was hired to engineer, select and install the manure handling equipment. Your bid for the entire project was in the amount of \$119,575.00. Mr. Beltman and Mr. DeGroot looked to you for the expertise in designing a functional system to handle manure at the dairy. However, the system engineered and installed by Standley simply does not work. Unfortunately, pursuant to the contract, Standley was paid the entire sum of \$119,575.00.

The problems with the system installed by Standley are numerous, and we

June 18, 2001

Page 2

understand that many of these issues previously have been brought to your attention.

First, the lagoon pump which supplies water for flushing the free stalls was inadequate and has required numerous modifications and upgrades.

As originally designed, Standley installed at the lagoon a forty horse power pump which later was replaced by a fifty and ultimately seventy-five horse power pump. This attempt to increase the volume of water from the lagoon pump was not effective, and instead caused serious electrical problems. 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. Although Idaho Power has not charged for all of its services, Mr. DeGroot has spent approximately \$5,000.00 for electrical repairs to the pump and breaker box at the lagoon. These costs are directly attributable to the inadequate design and installation of the pump(s). It also is significant that despite Standley's various attempts to increase water volume for flushing, through increased horse power, the free stalls still are not washed properly which now requires frequent manual scrapings that otherwise would not be necessary.

Finally, regarding the lagoon pump(s), my review of the various invoices indicates Standley has not credited Mr. DeGroot, as promised, for the fifty horse power pump that required replacement.

Second, Mr. DeGroot has expended sizeable sums in renovating the manure screening setup. Standley originally installed two roller presses and two slope screens to handle the dairy waste. The roller presses moved the manure onto a conveyor which, in turn, moved the manure to a stacker. However, the roller presses, conveyor and stacker never functioned as designed, warranted or intended. Both the conveyor and stacker continually were breaking belts, which cost Mr. DeGroot an estimated \$3,500 in belt replacements. Eventually, 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. This renovation caused Mr. DeGroot to incur additional expenses in the amount of \$16,588.00 (exclusive of his labor costs) that would not have been necessary had the system been properly designed from the

June 18, 2001

Page 3

outset. As you know, Mr. DeGroot completely has abandoned use of the roller presses, conveyor and stacker which he purchased from Standley less than one year ago.

Third, the agitator pumps installed by Standley are not sufficient to keep up with the flow of green water from the free stalls. Pursuant to Standley's design, you installed two agitator pumps in the holding pond to pump the manure water through the slope screens. However, the two pumps are inadequate to handle the waste created by the dairy cows. The information we have obtained suggests Standley's design (two pumps) would be sufficient for a dairy milking between five and six hundred cows, but not 1,800 - 2,000. As a result, manure accumulates in the holding pond which then must be scraped with a tractor. The manure scraped from the holding pond cannot be run through the slope screens which, in turn, reduces 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, Mr. DeGroot now is forced to replace the manure handling equipment and install a system capable of handling the needs of the 1,800 to 2,000 head dairy operation he constructed. Therefore, pursuant to Idaho Code § 28-2-608, Mr. DeGroot is revoking his acceptance of the manure handling equipment sold and installed by Standley. In connection with this revocation, demand is hereby made for the return of \$119,575 which reflects all sums paid by or on behalf of Mr. DeGroot for the manure handling equipment he seeks to return.

Additionally, demand is made for \$25,088 which reflects the amount Mr. DeGroot has spent, as a result of Standley's actions and/or inactions, to repair electrical problems and construct the separating wall referenced above. These repairs and modifications would not have been necessary had the system been properly designed and installed by Standley.

June 18, 2001

Page 4

Finally, although you have continued to bill Mr. DeGroot for approximately \$20,000 worth of expenses incurred after completion of the dairy, it appears that those charges largely have been incurred as a result of the various installation and engineering problems discussed above. Obviously, Mr. DeGroot does not intend to tender payment for any services, parts or materials which were necessary as a result of Standley's failure to engineer and install a proper, working manure handling system.

Therefore, please make arrangements with our office to repay Mr. DeGroot the total sum of \$144,663 and reclaim the equipment rejected by Mr. DeGroot by June 25, 2001. It should go without saying that Mr. DeGroot cannot simply shut down the dairy, so we will need to work together to coordinate removal of the Standley system with the replacement manure handling equipment. Mr. DeGroot has been working on the design and installation of a replacement system to expedite removal of the portions of the Standley system still in use.

Your failure to tender the above-stated amount, and coordinate removal of the manure handling system from the dairy by June 25, 2001, will leave Mr. DeGroot with no alternative but to seek redress from the courts for breach of contract, rescission, breach of warranty and all consequential damages associated with the improperly designed and installed manure handling system. In the event litigation is required to resolve this dispute Mr. DeGroot also will be entitled to an award of attorney fees and costs associated with prosecuting this action pursuant to Idaho Code § 12-120(3).

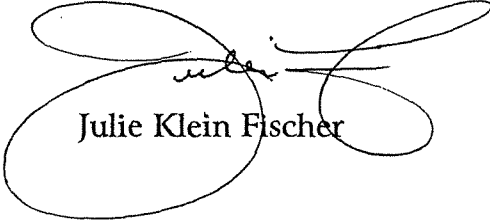
Mr. DeGroot would like to resolve this matter without litigation and avoid the additional time and expenses associated therewith. Toward that end, I look forward to hearing from you and to a quick resolution of this matter.

June 18, 2001
Page 5

Please direct all communication to either Kevin Dinius or me at the Nampa address and telephone number listed above. Thank you in advance for your anticipated cooperation.

Sincerely,

WHITE PETERSON



Julie Klein Fischer

JKF:ts

WHITE PETERSON

WHITE, PETERSON, MORROW, GIGRAY, ROSSMAN,

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June 18, 2001

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COMPANY: Standley & Co.
ADDRESS: Twin Falls, ID
TEL. #: 208/732-6131
FAX #: 208/732-6184

FROM: Julie Klein Fischer
File No.: 19213

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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 REPLY
MEMORANDUM ON MOTION FOR
SUMMARY JUDGMENT

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

Counterclaimant,

vs.

CHARLES DeGROOT; AND
DeGROOT DAIRY, LLC,

Counterdefendants.

I.

INTRODUCTION

Defendant Standley Trenching, Inc. filed a motion for summary judgment and supporting memorandum broadly alleging that the Plaintiffs (DeGroot) in this action have no right of recovery against Standley because there was no basis for their claims arising out of either contract, or privity of contract, and that they also had no standing as a third party beneficiary to recover upon their claims.

DeGroot responded to Standley's summary judgment motion by continuing to argue that they could recover upon their claims as a third party beneficiary, and that they were entitled to invoke certain provisions of Article 2 of the Uniform Commercial Code as a basis for their claims, without actually being a "party" to a sales contract with Standley.

Standley now files this Reply Memorandum, in which it argues that it is entitled to summary judgment as a matter of law because DeGroot has failed to effectively distinguish the controlling Idaho authority upon which Standley relies, and because there are no genuine issues of material fact precluding the entry of summary judgment for Standley.

II.

ISSUES ON STATEMENT OF FACTS

Before proceeding with its reply argument, Standley would like to briefly point out that some of assertions in DeGroot's Statement of Facts create false inferences that are not supported by the record before this Court.

DeGroot makes the following statement of fact at page 3 of their summary judgment opposition memorandum:

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.

The implication that arises from this statement is that DeGroot provided Standley with a set of plans, upon which Standley based his subcontractor bid that was submitted to Beltman. What DeGroot omits from this statement is that the plans which are referred to were provided by a third party, not by DeGroot. In his own deposition, DeGroot admitted that he obtained plans from other potential bidders and that the plans that were presented to Standley had been provided by another bidding contractor, Marion Vance, who was not awarded the bid on the DeGroot dairy project. Charles DeGroot 10/22/02 Depo., pp.62-67.

Later on in his recitation of facts, DeGroot alleges that Standley was, “the exclusive dealer in Idaho for Houle equipment.” DeGroot Summary Judgment Opposition Memorandum at pg. 4. Apparently DeGroot is attempting to imply that Standley possessed some sort of Idaho monopoly in respect to the sale of Houle equipment. Actually, Houle dealers are established by counties. Standley testified that he was the dealer for Houle primarily in Treasure and Magic Valleys, constituting the counties of Ada, Canyon, Payette, Twin Falls, Jerome, Gooding, & Cassia, and perhaps a few more. Standley Depo., pg. 19, L. 18 to pg. 20, L. 5.

Of note however, it is curious that DeGroot did not acknowledge in any fashion their use of a pit run mixture of sand and gravel, instead of compost as bedding in the free stalls, which is a substantial deviation from the assumptions upon which the system was designed, and which had a severe effect on the proper functioning of the manure handling equipment. Standley Depo., pg. 118.

Although these instances appear to be rather minor deviations in DeGroot’s recitation of the facts underlying this case, because DeGroot’s causes of action allege Standley’s breach of various contractual obligations, it is important to carefully identify those individuals who actually performed a particular function or obligation upon which the contractual claims in this case arise.

III.

ARGUMENT

A. DeGroot Has Failed To Demonstrate That There Is Any Genuine Issue of Material Fact Which Establishes That They Were A Third Party Beneficiary Of The Contract Between Beltman and Standley

Although not expressly so stated in their summary judgment opposition memorandum, DeGroot makes no argument in support of direct contractual remedies against Standley. Their entire response argument is based solely upon DeGroot's alleged status as a third party beneficiary of Standley's subcontractor bid contract with the general contractor, Beltman.

DeGroot relies upon the Idaho Supreme Court's decision in *Just's Inc. v. Arrington Construction Co.*, 99 Idaho 462, 464, 583 P.2d 997 (1978) in support of their argument that it is not necessary that the plaintiff be named and identified individually within a contract in order to be a third party beneficiary of that contract. The *Just's* decision does not aid DeGroot's argument because it involved a contract that did in fact contain several provisions expressly included for the sole benefit of the named third party beneficiaries, and because the application of that decision has been limited to public works contracts and situations involving special rights created by statute.

The rule that DeGroot cites from the *Just's* decision is derived from an earlier decision, *Stewart v. Arrington Construction Co.*, 92 Idaho 526, 446 P.2d 895 (1968), which established a test that must be satisfied before a third party can enforce the terms of a public works contract. Even more significant to the Court's decision in the *Just's* case is that it involved a local improvement district (LID) that was funded by the Idaho Falls merchants who were the plaintiffs and claimed third party beneficiaries in that action. The Court in *Just's* set out the additional factors unique to statutory status of an LID in support of its finding that the local Idaho Falls merchants were intended third party beneficiaries in that case:

The extent to which the property owners within the LID may control the creation and termination of the district further supports the conclusion that the improvements were intended primarily for the benefit of those within the LID. The Idaho statutes applicable to this case provided that 60% of the “resident owners” of the property within the LID could cause its creation, I.C. § 50-1711 (repealed 1976), and that protests by more than 2/3 of the property owners within the LID would halt all work within the district unless 3/4 majority of all members of the city council voted in favor of its continuance. I.C. § 50-1715 (repealed 1976).

In order to finance improvements by means of special assessments in connection with an LID, the law requires that the improvements constitute a direct and special benefit to the property within the district, not merely an incidental benefit shared by the general public. Members of an LID have unique statutory rights regarding the initiation and termination of the LID and the construction of the improvements, rights not shared by the general public. The property within the LID, not the city or the general public, will be directly liable for the special assessments imposed to finance the construction of the improvements. I.C. § 50-1730 (repealed in 1976); *Hughes v. Village of Wendell*, 47 Idaho 370, 275 P. 1116 (1929). Accordingly, the subject matter of this contract-improvement made pursuant to an LID is a factor, though not controlling, in determining whether the contract was intended for the benefit of a limited class of third persons.

99 Idaho at 465, 583 P.2d at 1000.

The Court in the *Just*'s decision then went on to detail specific contractual provisions that were made for the direct benefit of the Idaho Falls businesses that were funding the LID, including dust abatement; business access; the scheduling of work and liquidated damages; and under-sidewalk basements, freight drops and coal chutes. 99 Idaho at 465-66, 583 P.2d at 1000-01. It is clear that on the facts of the *Just*'s decision both the express terms of the contract and the fact that it involved a public works contract for a statutorily-based local improvement district were significant to the Court's decision finding that the local merchants were third party beneficiaries of the contract.

In subsequent decisions involving this issue, Idaho's appellate courts have very narrowly limited the application of the third party beneficiary rule stated in the *Just*'s decision to public works contracts that involved a clearly designated beneficiary, as opposed to the public generally. *See e.g.*, *R.W. Beck and Associates, Inc. v. Job Line Construction, Inc.*, 122 Idaho 92, 96, 831 P.2d 560, 564

(Ct.App.1992) (“In Idaho, it has been held that construction contracts between a contractor and a public body **are not** generally considered as being for the benefit of third parties, *Just’s, Inc. v. Arrington Construction Co.*, 99 Idaho 462, 463, 583 P.2d 997, 998 (1978), citing *Davis v. Nelson-Deppe, Inc.*, 91 Idaho 463, 424 P.2d 733 (1967),” (emphasis added), and further noting that a contract relied upon as authorizing recovery by a third-party beneficiary must be strictly construed in favor of person against whom liability is asserted. See, *Dawson v. Eldredge*, 84 Idaho 331, 337, 372 P.2d 414, 418 (1962)). See also, *Wing v. Martin*, 107 Idaho 267, 274, 688 P.2d 1172, 1179 (1984) (Denying third-party beneficiary status to farm land lessees on the basis that the *Just’s* decision involved a public works contract, and was therefore distinguishable).

None of the factors that compelled the Court in the *Just’s* decision to find that the local Idaho Falls merchants were third party beneficiaries of the contract in that case are present in this case. This case does not involve a public works contract, the area of third party beneficiary law to which the holding in the *Just’s* case has been confined. This case does not involve specific statutory rights or requirements in respect to the alleged third party beneficiary that were present in respect to the local improvement district (LID) that was the subject of the dispute in *Just’s*. Nor does this case involve any specific contractual provisions made for the express benefit of DeGroot, which in fact did exist in the public works contract that was at issue in the *Just’s* decision. In summary, none the reasons that compelled the Court in *Just’s* to find that the local Idaho Falls merchants were third party beneficiaries of the contract in that case are present in this case. Therefore, because the *Just’s* decision is so clearly distinguishable from the facts before this Court, it does not provide a controlling precedent compelling a determination that DeGroot was a third party beneficiary of the bid contract between the general contractor, Beltman, and Standley, as a subcontractor.

1. DeGroot Has Failed To Distinguish *Nelson*

In its opening brief on summary judgment, Standley relied upon the Idaho Court of Appeal's recent decision in *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 99 P.3d 1092 (Ct.App.2004) as reiterating the long-standing general rule that, based upon I.C. § 29-102, 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. Defendant Standley Trenching Inc.'s Memorandum in Support, p. 6

In their summary judgment opposition memorandum, DeGroot attempts to distinguish *Nelson* by arguing that Nelson in bringing that action did not plead a third party beneficiary theory on the face of his complaint; that the subcontractor, Anderson, was simply a material supplier; that there was no evidence that the contract in *Nelson* expressed an intent to benefit the plaintiffs; and that by contrast DeGroot was named the "customer" on Standley's invoices; and that without payment from DeGroot there would have been no need to install the manure handling system. DeGroot's Summary Judgment Opposition Memorandum at pp. 9-10.

In reply, Standley first points out that the salient facts from *Nelson*, which were set out in his opening summary judgment memorandum, did establish that in the *Nelson* decision the contractor's order for materials from the subcontractor, Anderson, was made in Nelson's name; that the materials were delivered to Nelson's residence; and that Anderson, as the subcontractor, in fact knew that the materials were being used to construct a cabin on Nelson's property. Therefore, DeGroot's argument that he was named as "customer" on Standley's invoices and that the ultimate source of Standley's payments was DeGroot, is no different factually than the situation in *Nelson* in which the Court of Appeals held that such facts do not make the project owner a third party beneficiary to the contract

between the contractor and subcontractor. Rather than creating a distinction, these facts confirm *Nelson* as controlling authority in this case.

The remaining factual differences between the *Nelson* decision and the facts before the Court in this case upon which DeGroot relies do not create any meaningful legal distinctions in the application of the law to the facts of this case. The district court in *Nelson* ruled on the third party beneficiary issues. (“In November 2002, the district court granted Anderson’s, Wicher’s, and IBP’s motion for summary judgment finding that no contract existed between the parties, that Steinbruegge was not an agent of any defendant or of the Nelsons, and that the Nelsons were not third party beneficiaries of a contract between Steinbruegge and any of the other defendants.” 140 Idaho at 706, 99 P.3d at 1096). DeGroot’s argument, that it is significant to the decision of this case that the third party beneficiary issue was not raised in the complaint initiating the action in *Nelson*, is not supported by citation to any legal authority that upholds his assertion that the legal reasoning of the Court of Appeals’ in affirming the district court’s decision on the third party beneficiary questions in *Nelson* is therefore somehow not persuasive precedent as applied to the similar facts that are now before this Court.

Nor is it apparent on the face of DeGroot’s argument why it is legally significant to the application of the *Nelson* precedent concerning third party beneficiary relationships, alleged to arise out of contracts between a contractor and subcontractor, that Anderson in the *Nelson* case was only a “materials supplier,” while it is alleged (but not clearly established by the facts) that Standley in this case, “actually assisted in the design,” and installation of the manure handling system. DeGroot’s Summary Judgment Opposition Memorandum at pg. 10. The Court of Appeal’s holding in the *Nelson* decision that, in the absence of an “express” declaration, a third party beneficiary relationship does not arise out of a contractor/subcontractor contract, relied upon the general

statement of the law made in Corbin on Contracts and the Restatement (Second) of Contracts, § 302. 140 Idaho at 709, 99 P.3d at 1099. That statement of the law drew no distinctions between the status of a subcontractor as a merely a materials supplier, or a service provider or installer, or one that provides design services. The controlling rule of law was not based upon the character of the work that was performed by the subcontractor, but rather focused exclusively upon the contractual relationship between any subcontractor and a general contractor as excluding the creation of third party beneficiary rights in the owner unless the contract itself expressed an intent to benefit the owner as a third party beneficiary. 140 Idaho at 708, 99 P.3d at 1098.

DeGroot's argument that "without payment" from DeGroot there would have been no reason for installation of the manure handling system also fails to create any meaningful legal distinction with the *Nelson* case. In every construction contract, whether it be the contract at issue in the *Nelson* case or the payments made in this case, those payments filter down from the owner to the general contractor to the subcontractors. DeGroot has cited no legal authority for this argument, which is not so much an argument as it is a statement of an incidental fact that has no bearing on the decision of this case.

In summary, *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 99 P.3d 1092 (Ct.App.2004) addressed alleged third party beneficiary relationships that may arise out of contracts between general contractors and subcontractors. *Nelson* is the closest factual precedent applicable to the third party beneficiary issues before this Court. As applied to the facts of this case, *Nelson* dictates that summary judgment be entered for Standley on DeGroot's third party beneficiary claims.

2. The Idaho Supreme Court Has Not Applied The *Tusch Enterprises* Decision, As Argued by DeGroot

DeGroot also argues that the interests of judicial economy would be served in allowing their

claims to go forward against Standley based upon the rationale applied by the Court in *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987), in which the implied warranty of habitability in residential construction was extended to subsequent purchasers not in privity with the builder. The essence of DeGroot's argument is contained in the following statement:

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 bring an action against the subcontractor. Clearly, this scenario does not encourage judicial economy and only serves to waste resources.

DeGroot Summary Judgment Opposition Memorandum at pg. 11.

It is the evils inherent in a multiplicity of suits upon which the rule of judicial economy is predicated. *See e.g., Deer Creek, Inc. v. Clarendon Hot Springs Ranch, Inc.*, 107 Idaho 286, 292-93, 688 P.2d 1191, 1197-98 (Ct.App.1984). For reasons both unstated and unknown, DeGroot has not named Beltman, the general contractor on his dairy construction project, as a party in this action. If Beltman had been named as a party he, in turn, could have filed cross claims against the subcontractors under Rule 13(g) of the Idaho Rules of Civil Procedure, and the entire matter could have been resolved in a single proceeding. In that instance, judicial economy would have been achieved, rather than denied. DeGroot's now tardily-stated desire for judicial economy provides no legally recognized justification for direct actions against subcontractors with whom he has no contractual relationship, with whom he is not in privity of contract, and against whom he cannot establish third party beneficiary standing under the applicable *Nelson* precedent.

Nor can DeGroot seek refuge in the *Tusch* decision. The rationale of that case has never been extended to any situation that does not involve the implied warranty of habitability in residential construction. As further argued below in Part C of this reply argument, the Idaho Supreme Court has reaffirmed the applicability of the privity rule to all other implied warranty claims in *Ramert*

v. *Hart*, 133 Idaho 194, 983 P.2d 848 (1999). The rationale of *Tusch*, as limited to the implied covenant of habitability in residential construction, has no application to the facts of this case involving construction of a dairy, in which the question of habitability plays no part.

DeGroot has failed to cite to any controlling legal authority or precedent that establishes any right of recovery as a third party beneficiary against Standley. Summary judgment should be entered for Standley on DeGroot's claims.

B. DeGroot Has Failed To Demonstrate That There Is Any Genuine Issue Of Material Fact Establishing That He Has Any Right Of Rescission Against Standley

1. Regardless of Whether DeGroot Is Characterized as One Who "Buys Goods" or "Contracts to Buy Goods" The Right of Rescission Still Requires A Contractual Relationship

DeGroot alleges at page 12 of their summary judgment opposition memorandum that, "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." (emphasis added). There is no evidence in the record that support this statement that DeGroot made a direct purchase of the Houle equipment from Standley. There is no purchase invoice between DeGroot and Standley; there is no direct payment for this equipment by DeGroot to Standley.

In their argument, DeGroot apparently seeks to establish a distinction in the UCC definitions of "buyer," as one who "buys or contracts to buy goods," and "seller," as one who "sells or contracts to sell goods." I.C. § 28-2-103(a) & (d). Regardless of whether one buys or sells, or contracts to buy or sell, the same outcome occurs – the buyers and sellers become parties to a contract. Article 2 of the Uniform Commercial Code, upon which DeGroot relies, regulates commercial sales contracts. Section 28-2-106(a) declares that:

In this chapter unless the context otherwise requires “contract” and “agreement” are limited to those related to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from seller to the buyer for a price (section 28-2-401). A “present sale” means a sale which is accomplished by the making of the contract.

DeGroot also entirely ignores Standley’s citation in his opening summary judgment memorandum to the UCC - Sales statute of frauds found at I.C. § 28-2-201, which requires that contracts for the sale of goods at a price of \$500 or more are to be in writing. It is a general rule of statutory construction that statutes addressing the same subject matter are interpreted together, that is, *in pari materia*. *Grand Canyon Dories v. Idaho State Tax Comm’n*, 124 Idaho 1, 855 P.2d 462 (1993). Such statutes are construed together to effect legislative intent. *Id.*

DeGroot has admitted that they did not enter into a contract with Standley. DeGroot 10/22/02 Depo., pg. 69, LL. 7-8. DeGroot has predicated their entire right to recover in this action on being a third party beneficiary to the contract between the general contractor, Beltman, and Standley, as a subcontractor. Their argument that they should be considered a “buyer,” for purposes of asserting a right of rescission requires that they would be a party to a contract with Standley, which denies every assertion that they otherwise has made in support of their right of recovery against Standley. In the face of the facts underlying their claims, DeGroot’s argument that they are a “buyer” from Standley, for purposes of I.C. § 28-2-608, is simply self-contradicting.

Standley’s motion for summary judgment on DeGroot’s rescission claim should be granted.

2. DeGroot Has Not Established That Any Express Warranty Was Made That Was A Part Of The Basis Of The Bargain

In the opening brief in support of its motion for summary judgment, Standley argued that there is no evidence that it ever made any affirmation of fact or promise, or provided any description of the goods to DeGroot that amounted to an express warranty. Standley Trenching, Inc.’s

Memorandum in Support, p. 12. In response, DeGroot relies upon a statement by Standley's employee, Jeff Griggs, in respect to maintenance of the manure handling system that, "You won't have to worry about it," and the fact that Standley allegedly held itself out as having "specific expertise in Houle's manure handling equipment," as supporting the creation of an express warranty. DeGroot argues that, "a direct contractual relationship does not appear to be required by the statute itself or the case law interpreting the statute." *See*, DeGroot's Summary Judgment Opposition Memorandum at pg. 14.

Standley replies to DeGroot's opposition argument by first noting that both the statute on its face, I.C. § 28-2-313 ("the basis of the bargain"), and the case law interpreting the statute, require a direct contractual relationship for the creation of an express warranty. The representations cited in the paragraph immediately above, upon which DeGroot relies as establishing an express warranty, fail as to the essential requirement that a representations must become a "basis of the bargain" in order to establish an express warranty. Aside from the fact that Jeff Griggs had no agency authority to bind Standley, his statement to DeGroot was made not at the time any bargain was made but, as is apparent in the lines immediately preceding the deposition citation upon which DeGroot relies, at the time work on the manure handling was completed in April 2000. *See*, Earnest DeGroot Depo., pg. 40, LL. 12-23.

DeGroot provides no citation to the record for his second argument on the creation of an express warranty, but their reference to statements Standley allegedly made to DeGroot apparently indicates their meeting at the Tulare, California trade show, as cited to the record in DeGroot's Statement of Facts at pp. 2-3 of his summary judgment opposition memorandum. A review of that cited deposition testimony does not reveal any affirmation of fact or promise by Standley to DeGroot that could support the creation of an express warranty. Furthermore, this interaction took place in

February 1999. DeGroot in his own argument states that his bid contract with Beltman did not arise until June 1999, and in turn Beltman's subcontract bid contract with Standley did not arise until sometime after that date. DeGroot's Summary Judgment Opposition Memorandum at pp. 3 & 14. Because both instances relied upon by DeGroot are extremely remote from the time any bargain was made, neither would have become a part of the basis of the bargain, even if there were evidence that an affirmation or promise had been made by Standley to DeGroot at those times.

In *Large v. Cafferty Realty, Inc.*, 123 Idaho 676, 851 P.2d 972 (1993), the Idaho Supreme Court noted that in the *Tusch* case, already cited above, it had denied recovery on the breach of express warranty on the basis that the contractor in that case was not a party to the contract:

More interesting, however, is the fact that in *Tusch*, the Court also upheld a dismissal of a breach of express warranty claim against the contractor who built the duplexes, not because of the application of the parol evidence rule, but instead, **because the contractor was not a party to the contract between the buyer and seller.** *Id.* at 43, 740 P.2d at 1028. It follows that a rule of contract interpretation, like the parol evidence rule, is not applicable in the absence of a valid contract between the parties.

123 Idaho at 682, 851 P.2d at 978 (emphasis added).

In *Duffin v. Idaho Crop Improvement Association*, 126 Idaho 1002, 895 P.2d 1195 (1995) the Idaho Supreme Court, in addressing an issue of warranty disclaimers arising as part of the "basis of the bargain," under the Uniform Commercial Code, held that such disclaimers must be made at the time the contract is formed to be effective:

It is fundamental that to be effective, disclaimers of warranties and remedy limitations **must be part of the bargain struck by the parties.** *See generally* White & Sumner § 12-1. As a threshold matter, CFI's contention that disclaimers printed in the Rules of Certification and the ICIA Grower Directory *ipso facto* became a term of an agreement between a buyer and seller is meritless. Therefore, our focus is on the certification tags which actually purport to insert terms into the agreement between the buyer and seller. These tags state that "[b]y acceptance of these seed potatoes, buyer expressly agrees that the disclaimer of warranty and limitation of remedy . . . are express conditions of the sale."

In this case, **the contract was formed when Duffin accepted CFI's offer to sell.** CFI's principal admitted that the parties did not discuss any warranty disclaimers or remedy limitations. Therefore, **the provisions drafted by ICIA and printed on the certification tags simply could not become a term of the contract; not only were they unilaterally interjected after the contract had been formed, they were interjected by a stranger to the contract. . . .**

126 Idaho at 1012, 895 P.2d at 1205 (emphasis added).

There is no allegation that any contract was contemplated, much less formed, at the time that DeGroot and Standley spoke at the Tulare trade show in February 1999. DeGroot has unequivocally stated that he entered into no contract at any time with Standley. DeGroot 10/22/02 Depo., pg. 69, LL. 7-8. In applying I.C. § 28-2-313 in respect to express warranties the Idaho Supreme Court in *Tolmie Farms v. J.R. Simplot Co.*, 124 Idaho 607, 862 P.2d 299 (1993) declared:

The Uniform Commercial Code (U.C.C.) provides that an express warranty may be created by “[a]ny affirmation of fact or promise made by the seller to the buyer which relates to the goods **and becomes a basis of the bargain.** . . .” I.C. § 28-2-313(1)(a). It further provides that “a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.” I.C. § 28-2-313(2).

124 Idaho at 611, 862 P.2d at 303 (emphasis added).

On the basis that DeGroot has failed to establish evidence of any promise or affirmation by Standley constituting an express warranty; failed to establish that any such statement, that may have been made, became a basis of the bargain; and has failed to establish the fact that there was any contract between DeGroot and Standley to which an express warranty could attach, Standley’s motion for summary judgment on DeGroot’s express warranty claims should be granted.

C. The Privity Rule Established In The *Salmon River Sportsmen* Decision Continues To Be The Controlling Principle Of Law In This State

DeGroot also rejects Standley’s reliance upon the Idaho Court of Appeal’s recent decision in *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 99 P.3d 1092 (Ct.App.2004) because the Court

in *Nelson* failed to consider the continued validity of the decision in *Salmon River Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 353, 544 P.2d 306, 311 (1975) concerning the privity rule. DeGroot's Summary Judgment Opposition Memorandum at pg. 15.

In reply, Standley first argues that, although the Idaho Court of Appeals in *Nelson* could certainly state any misgivings it might have about the continued validity of the *Salmon River* case, that Court had no authority to overturn or limit the precedential effect of that decision. It has long been settled in Idaho that the Idaho Supreme Court is the final arbiter of Idaho decisional law, and that the decisions of the Idaho Court of Appeals cannot overturn precedent established by the Idaho Supreme Court. *See e.g., State v. Guzman*, 122 Idaho 981, 985-87, 842 P.2d 660, 664-666 (1992).

DeGroot relies upon the Idaho Supreme Court's decisions in *State v. Mitchell Construction Co.*, 108 Idaho 335, 699 P.2d 1349 (1984), and *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987) for the proposition that the privity requirement stated in the *Salmon River* decision is of questionable continued validity. DeGroot Summary Judgment Opposition Memorandum at pp. 16-17. In reply to this argument Standley first points to the fact that neither of the decisions relied upon by DeGroot ever established a controlling Idaho precedent by the required three votes concurring in an opinion that would be necessary to overrule the *Salmon River* privity rule. *See, Osick v. Public Employee Retirement System of Idaho*, 122 Idaho 457, 459-460, 835 P.2d 1268, 1270-71 (1992) (“[W]here the third vote necessary to pronounce a decision is by a justice who concurs in the result only, the rationale contained in the opinion is not a decision of the Court and is not controlling in other cases.”).

Furthermore, whatever doubt concerning the continued validity of the privity rule, as declared in the *Salmon River* case, that may have been created by the 1987 *Tusch* decision or the 1984 *Mitchell Construction* decision upon which DeGroot relies, has been erased by the Idaho Supreme

Court's 1999 reaffirmation of the privity rule in *Ramerth v. Hart*, 133 Idaho 194, 983 P.2d 848

(1999), in which the Court held as follows:

In *Salmon Rivers Sportsman Camps, Inc. v. Cessna Air. Co.*, *supra*, this Court held that privity of contract is required in a contract action to recover economic loss for breach of implied warranty. The rule announced in *Salmon Rivers* was again followed in *Clark v. International Harvester Co.*, 99 Idaho 326, 581 P.2d 784 (1978), which also held that purely economic damages could not be recovered in a negligence action. *Salmon Rivers* has been the subject of substantial debate regarding the desirability of the rule that it announced as well as its continuing validity. See *State v. Mitchell Construction Co.*, 108 Idaho 335, 699 P.2d 1349(1984). In *Tusch Enterprises v. Coffin*, *supra*, concurring specially in the Court's opinion, Justice Bistline wrote:

Having concurred in the majority opinion, I write only to inform the trial bench and bar that [*Salmon Rivers*], which is recognized as having continued but doubtful validity in the opinion for the Court, was specifically overruled in the *State v. Mitchell* case, also mentioned in our opinion. West Publishing Co. correctly observed this in its syllabus to the *Mitchell* case, "Privity of contract is not required in a contract action to recover economic loss for breach of implied warranty; overruling *Salmon Rivers*," *supra*, 108 Idaho at 335, 699 P.2d at 1349, 1350. It was only after rehearing in *Mitchell* that I pointed to (and attached) the district court's decision based entirely on *Salmon Rivers*' non-privity holding, and joined the views of Justices Huntley and Donaldson as to the validity of the *Salmon Rivers*' holding. Although West Publishing observed my change of views and vote, Donaldson, J., did not change his concurrence with Justice Bakes' opinion. Hence, 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 of dismissal, was overruled. It is a bit of an anomaly.

113 Idaho at 51, 740 P.2d at 1036. Despite Justice Bistline's opinion, however, the majority opinion in *Tusch* recognized the continuing validity of *Salmon Rivers*. The Court in the majority opinion in 113 Idaho at 50, 740 P.2d at 1035, stated:

Therefore, we decline to extend the privity requirement enunciated in *Salmon Rivers* to the facts at hand. The instant case is not a goods case, and the question regarding the continued vitality of *Salmon Rivers* in such cases is better left to another day when a response on our part would be something more than mere dictum.

We conclude, therefore, that *Salmon Rivers* remains valid. We are not persuaded that the rule announced in *Salmon Rivers* should be further relaxed to allow a claim for breach of implied warranty on the facts of this case.

The primary argument advanced against the requirement of privity is its perceived unfairness, particularly in light of the economic loss rule preventing plaintiffs from recovering economic damages in tort. Ramerth submits that if this Court rejects his argument, he will have no way to redress the injuries that he suffered because of the defective airplane. However, the record in this case casts uncertainty on his argument. Despite what appear to us to be obvious conflicting interests, Ramerth and Morris nonetheless joined together to pursue this action against Hart. Consequently, neither was able to fully explore options that may otherwise have been available. We agree that there may be cases where the plaintiff may be unfairly prejudiced by the operation of the economic loss rule in combination with the privity requirement articulated in *Salmon Rivers*. Given such a case, further relaxation of *Salmon Rivers* may be justified. We are not convinced that this is such a case.

133 Idaho at 197-98, 983 P.2d at 851-52 (emphasis added).

Consistent with the Supreme Court's reaffirmation of the privity rule in the *Ramerth* case, this Court should grant summary judgment to Standley on DeGroot's implied warranty causes of action due to lack of privity between Standley and DeGroot.

D. A Third Party Beneficiary Is Not A Party To A Contract To Whom The Implied Covenant of Good Faith And Fair Dealing Applies

In its opening brief on motion for summary judgment Standley argued that if no contract between the parties existed, then there could be no action for breach of the implied covenant of good faith and fair dealing which is implied in every contract. Standley Trenching Inc.'s Memorandum in Support, p. 15. In response, DeGroot has not contested Standley's argument that no contract existed between them, but instead argues that, "it is not at all clear that a third party beneficiary of a contract cannot recover for breach of the covenant." DeGroot Summary Judgment Opposition Memorandum at pg. 18.

In his response argument, DeGroot first implies that Standley's argument for summary judgment on the implied covenant cause of action is based only upon a single, recent, isolated authority, *Huyett v. Idaho State University*, ___ Idaho ___, 104 P.3d 946, 952 (2004). Additional

Idaho authority does support the obvious proposition that in the absence of a contract, there can be no breach of an implied covenant arising from that non-existent contract. *See e.g., King v. Lang*, 136 Idaho 905, 910, 42 P.3d 698, 703 (2002) ([T]here must be a contract in order for the covenant of good faith and fair dealing to apply. Since there was no contract with the respondents, there can be no violation of the implied covenant.”). *See also, In re Wiggins*, 273 B.R. 839, 878 (Bkrcty.D.Ida. 2001) (The implied covenant of good faith and fair dealing does not arise under Idaho law unless a contract exists).

DeGroot next argues that they are entitled to enforce the covenant of good faith and fair dealing as a third party beneficiary to the bid contract between Standley and Beltman. DeGroot cites no supporting Idaho authority for this argument. This is probably because existing Idaho authority on this issue expressly rejects DeGroot’s argument. The implied covenant of good faith and fair dealing has always been stated as an obligation that exists between the “parties” to a contract. This rule was stated in *Fox v. Mountain West Electric, Inc.*, 137 Idaho 703, 710-11, 52 P.3d 848, 855-56 (2002) (“The covenant requires the parties to perform in good faith, the obligations required by their agreement, and a violation of the covenant occurs when either party violates, nullifies or significantly impairs any benefit of the contract.”).

Obviously, if a third party beneficiary had the same status as a “party” to a contract, then there would be no need recognize the existence of the category of third party beneficiaries. The distinct and separate category of third party beneficiaries exists for the purpose of identifying those persons or entities that have limited rights to enforce obligations made for their direct benefit by the parties to a contract, but who otherwise have no other enforceable rights under that contract. The case on point is *Tolley v. Thi Co.*, 140 Idaho 253, 92 P.3d 503 (2004), in which the Idaho Supreme Court held as follows:

The implied-in-law covenant of good faith and fair dealing operates to protect “the right of the parties to an agreement to receive the benefits of the agreement that they entered into.” *Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 627, 627, 778 P.2d 744, 749 (1989). If a party is denied the right to the benefits of the agreement they entered into, then the covenant of good faith and fair dealing, which is implicit in the agreement, is breached. *Id.* **Marsha was not a party to the Agreement.** The district court correctly ruled that her claim of breach of the covenant of good faith and fair dealing claim should be dismissed.

140 Idaho at 261, 92 P.3d at 511 (emphasis added). Following this holding the Court in *Tolley* went on to identify Marsha’s status as analogous to a third party beneficiary to the contract, with only a third party beneficiary’s rights. The Court reasoned as follows:

Marsha’s position relative to THI and its shareholders is analogous to that of a third party beneficiary. In *Lewis v. CEDU Educational Services, Inc.*, 15 P.3d 1147, 135 Idaho 139 (2000), the Court stated:

CEDU maintains that Lewis is bound to the terms of the contracts because he is in essence suing on the breach of those contracts. *Bantz* illustrates this Court’s position that a third-party beneficiary must comply with all the terms and provisions of an agreement to the same extent as they apply to the beneficiary. *Bantz*, 124 Idaho at 785, 864 P.2d at 623. The consent-to-sue provision at issue in *Bantz* was much broader as to its application than the “between the parties” language in *Rath* or the language in the contracts in this case. A third party beneficiary must comply with all of the terms of a contract the third party beneficiary seeks to enforce. *However, the third party beneficiary is only bound to the extent those terms apply to him or her. In this case, the arbitration provisions at issue only apply to the contracting parties.* Lewis was not a party to the contracts and is not bound by the arbitration provisions.

Id. (emphasis added).

A third-party beneficiary is only bound to the extent the terms of a contract apply to him or her. THI was granted summary judgment primarily because the terms of the Agreement applicable to Marsha via the Consent are clear that a cash payment for her community property interest in the event of divorce is only one of several options available to it. Marsha’s claim that she is entitled to a cash payment fails because she was bound by those terms applicable to her. On the other hand all provisions of the Agreement that are not specifically assented to as contained in the Consent are not applicable to her, including Section 16 of the Agreement which THI asserts as a grounds for granting attorney fees. THI is not entitled attorney fees under Section 16 of the Agreement.

140 Idaho at 262, 92 P.3d at 512 (*Italics in original, underlined/bold emphasis added*).

DeGroot's argument that he is entitled to sue, as a third party beneficiary, for breach of the implied covenant of good faith and fair dealing arising from a contract between Standley and Beltman, to which he was not a party, is contrary to Idaho law. Standley's motion for summary judgment on this claim should be granted.

E. DeGroot Has Not Presented Any Evidence Establishing Any Violation Of The Idaho Consumer Protection Act That Was Pled In His Complaint

In its opening brief on motion for summary judgment, Standley argued that it was entitled to summary judgment on DeGroot's cause of action alleging violation of the Idaho Consumer Protection Act (ICPA) because there was no contractual sales transaction between the parties that was subject to the ICPA, and because DeGroot had not alleged any facts in their Complaint or in response to discovery, that constituted a violation of the ICPA. Standley Trenching, Inc.'s Memorandum in Support, pp. 16-17. In response DeGroot has argued that Standley's summary judgment motion should be denied because no Idaho appellate court has ever decided whether a third party beneficiary of a contract may bring an action under the ICPA.

Standley's motion for summary judgment on DeGroot's ICPA claims should be granted in this case even if authority existed allowing a third party beneficiary to bring an action under the ICPA, and even if DeGroot could establish that he is such a third party beneficiary, because there is no factual support for their claims. DeGroot has alleged two specific violations of the ICPA:

(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:

I.C. § 48-603(6) & (7).

Standley argued in its opening summary judgment brief that Earnest DeGroot had admitted that the goods provided to him were “new,” such that no cause of action would arise under I.C. § 48-603(6). Earnest DeGroot Depo., at pg. 37, LL. 13-15; pg. 38, LL. 17-19. DeGroot has not contested this fact in his response brief. In the absence of any facts supporting DeGroot’s claims under I.C. § 48-603(6) summary judgment should be granted to Standley.

Standley also noted in its opening brief that in each of the three complaints that DeGroot has filed in this action, they have failed to allege that the goods and services provided by Standley were of a “different” standard, quality or grade than they had been represented to be for purposes of an action arising under I.C. § 48-603(7), Standley Trenching, Inc.’s Memorandum in Support, pp. 16-17. It is not merely the insufficiency of DeGroot’s complaint allegation upon which Standley bases its request for summary judgment, but rather it is DeGroot’s complete failure to provide any factual support whatsoever for a violation of I.C. § 48-603(7) upon which Standley seeks summary judgment. DeGroot alleges in their summary judgment opposition memorandum that Kurt Standley represented that he had a “particular expertise and knowledge of Houle equipment,” and that as a result of their experience with Standley it is, “at least questionable whether Standley actually did have such expertise.” DeGroot Summary Judgment Opposition Memorandum at pg. 20.

The only factual allegation that DeGroot raises in their response brief in support of a violation of I.C. § 48-603(7) is found at pg. 86, L. 17 to pg. 88, L. 12 of the Charles DeGroot Deposition and LL. 11-17, pg. 68 of the Earnest DeGroot Deposition. This testimony, at best, establishes only three things: (1) DeGroot went to the Tulare, California trade show; (2) He met and talked with Kurt Standley at the trade show, but there is no evidence as to what was said; and (3) he learned that Kurt Standley was a dealer for Houle pumps, (implied). DeGroot has provided no factual support whatsoever for his allegation that Standley made any representation to DeGroot as

to a “particular expertise” concerning any goods or services that were to be provided to DeGroot. In the absence of any facts establishing an initial representation as to the standard, quality, or grade of particular goods or services it is impossible to establish facts supporting a variance from that initial, nonexistent, representation that would be a violation of the Idaho Consumer Protection Act.

The party opposing summary judgment must provide more than a mere scintilla of evidence in support of his case. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 853, 727 P.2d 1279, 1281 (Ct.App.1986). DeGroot has provided no evidence in support of their claim under I.C. § 48-603(7). Therefore, summary judgment on this claim should be entered for Standley.

IV.

CONCLUSION

It is respectfully submitted that Standley’s motion for summary judgment should be granted.

Dated this 22 day of February, 2005.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of February, 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:

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Kevin E. Dinius
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Michael E. Kelly

FILED
110 A.M. P.M.
MAR 22 2005
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Order.Granted MSJ.wpd

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

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

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

Counterclaimant,

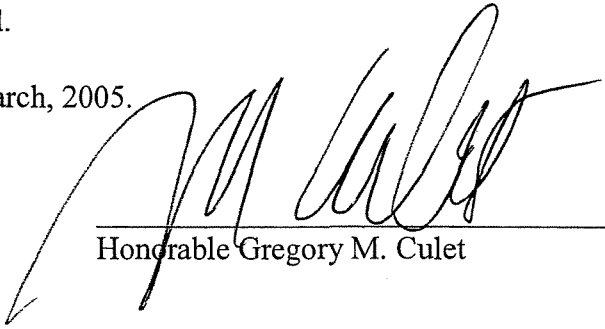
vs.

CHARLES DeGROOT; AND
DeGROOT DAIRY, LLC,

Counterdefendants.

The Defendant's Motion for Summary Judgment on the Plaintiffs' Complaint having come before this Court, and the Court having considered the matter in light of the briefing, affidavits and oral arguments of counsel, and for the grounds and reasons set forth by the Court in its findings and conclusions on the record at the hearing held on March 1, 2005, the Defendant's Motion for Summary Judgment is hereby granted.

Dated this 18 day of March, 2005.



Honorable Gregory M. Culet

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of March, 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:

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Kevin E. Dinius
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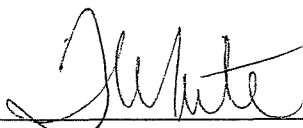
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Clerk of the Court

MAR 28 2005

CANYON COUNTY CLERK
C ROBINSON, 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., dba STANDLEY)
& CO.; and J. HOULE & FILS, INC., a)
Canadian corporation,)

Defendant.)

STANDLEY TRENCHING, INC., dba)
STANDLEY & CO.,)

Counterclaimant,)

-vs-)

CHARLES DeGROOT; and)
DeGROOT FARMS, INC.,)

Counterdefendants.)

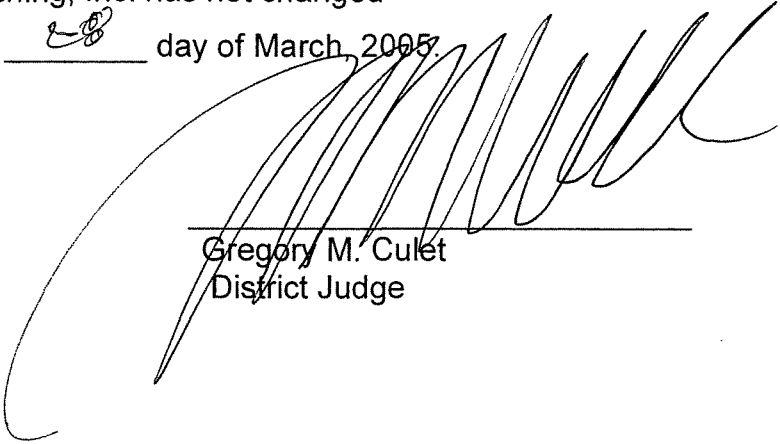
ORDER CONFIRMING SUMMARY
JUDGMENT

Case No. CV01-7777

ORDER SETTING CASE FOR TRIAL AND
PRETRIAL AND SCHEDULING ORDER

The above-entitled matter came before the Court on March 1, 2005 on Defendant's Motion for Summary Judgment. The Court made oral findings and conclusions and granted summary judgment to Defendant Standley Trenching on both its defense to Plaintiffs' case in chief, as well on Defendant's counterclaim, but the Court reserved the opportunity to reconsider the summary judgment ruling on the counterclaim. After giving further consideration to the documents before the Court and argument of counsel, the decision granting summary judgment to Standley Trenching, Inc. has not changed

Be it so ordered this 28 day of March, 2005.



Gregory M. Culet
District Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing order was forwarded to the following persons on this 28 of March, 2005.

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Robert D. Lewis
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APR 04 2005
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C ROBINSON, DEPUTY

Attorneys for Counterclaimant 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.)

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

JUDGMENT ON COUNTERCLAIM

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

vs.)

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

Counterclaimant Standley Trenching, Inc., d/b/a Standley & Co.'s Motion for Summary Judgment, having come on regularly for hearing on the 1st day of March, 2005, and the Counterdefendants being represented by their attorney of record, Kevin E. Dinius, of the firm White Peterson, and the Counterclaimant Standley Trenching, Inc., d/b/a Standley & Co. being represented

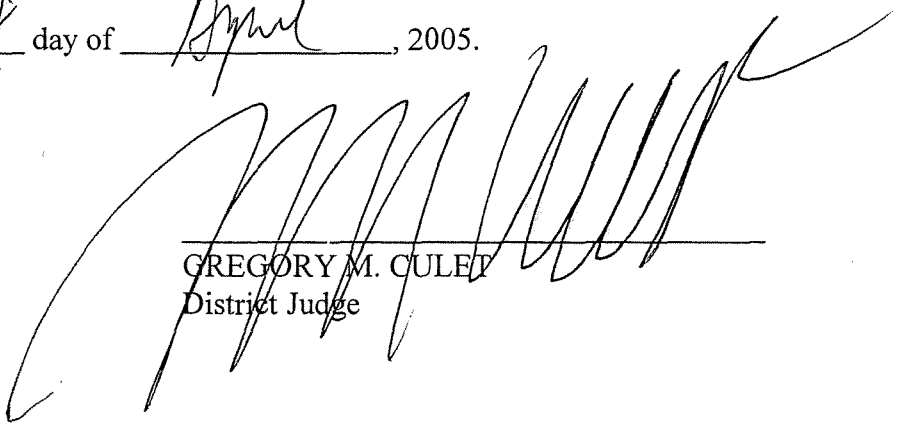
by its attorney of record, Robert D. Lewis, of the firm Cantrill, Skinner, Sullivan & King LLP, and the Court having considered the Memorandums and Affidavits filed herein, having heard oral argument, having granted Counterclaimant's Motion for Summary Judgment from the bench at the March 1 hearing, and the Court having entered its Order Confirming Summary Judgment on March 28, 2005;

NOW THEREFORE, IT IS HEREBY ADJUDGED AND DECREED:

Counterclaimant Standley Trenching, Inc., d/b/a Standley & Co. have and recover Judgment on Counterclaim against the Counterdefendants Charles DeGroot and DeGroot Farms, LLC, as follows:

1. The sum of \$20,259.57, together with interest accruing at the statutory rate of 12% per annum from March 16, 2001 to the present date; and
2. An award of interest on the above referenced amount accruing after entry of Judgment at the highest legal rate allowed by law until paid in full, along with reasonable costs and attorney fees to be determined at a later date following Counterclaimant's timely filing of a Memorandum of Costs and Fees.

Dated this 27 day of April, 2005.



GREGORY M. CULET
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2005, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

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Kevin E. Dinius
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5700 East Franklin Rd., Ste. 200
Nampa, ID 83687

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William A. McCurdy
702 West Idaho, Ste. 1000
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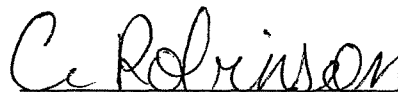
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Deputy Clerk of Court

F I L E D
A.M. 2:58 P.M.

AUG 18 2005

**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.,)

Plaintiff,)

-vs-)

STANDLEY TRENCHING, INC.,)
DbA STANDLEY & CO., and J.)
HOULE & FILS, INC., a)
Canadian corporation,)

STANDLEY TRENCHING, INC.,)
dba STANDLEY & CO.,)

Counterclaimant,)

-vs-)

CHARLES DeGROOT; and)
DeGROOT DAIRY, LLC,)

Counterdefendant.)

CASE NO. CV01-7777

MEMORANDUM DECISION
RESERVING ISSUE OF ATTORNEY
FEES AND COSTS UNTIL FINAL
RESOLUTION OF THE CASE

The above-entitled cause is before the Court on Defendant/Counterclaimant Standley Trenching, Inc.'s (Standley) motion for attorney fees and costs against Plaintiff Charles DeGroot and DeGroot Farms, LLC. (DeGroot).

History

Previously, Plaintiffs DeGroot filed a complaint in Case number CV 2001-7777 against co-defendants Standley and J.Houle & Fils, Inc. (Houle), alleging claims of breach of contract and breach of implied covenant of good faith and fair dealing against Standley, and claims of rescission, breach of warranties, and violation of the Idaho Consumer Protection Act against both Standley and Houle. Standley filed a counterclaim against DeGroot for money allegedly owed on an open account. The action arises out of the construction of a dairy for DeGroot by a contractor, Beltman Construction, Inc. (Beltman), for which Standley was a subcontractor, installing a manure drainage system. After the construction was completed, Standley performed certain repair work on the drainage system, upon which his open account claim is based.

This Court granted summary judgment to Standley on all of DeGroot's claims and on Standley's counterclaim. A key factor in granting summary judgment on DeGroot's claims against Standley was the Court's determination that no privity of contract existed between DeGroot and Standley, and that DeGroot was not a third party beneficiary of any contract between Standley and the general contractor, Beltman. Consequently, judgment was also entered in favor of Standley on the open account claim.

After the Court granted Standley summary judgment on DeGroot's claims, but before the Court granted summary judgment on Standley's counterclaim, DeGroot filed a separate action against Beltman in Canyon County case number CV 2005-2277. Subsequent to summary judgment being granted on Standley's counterclaim, the presiding judge in CV 2005-2277 (Degroot v. Beltman) granted a motion to consolidate it with this case (CV 2001-7777). Both of these actions involve the construction of

DeGroot's dairy and/or repairs thereto. DeGroot's claims against Beltman are nearly identical to DeGroot's claims against Standley. At some point in this process, Beltman filed a third party complaint against Standley and Houle in case number CV 2005-2277, alleging claims nearly identical to those raised by DeGroot.

On May 31, 2005, this Court denied DeGroot's Motion to Reconsider Judgment on Counterclaim and denied Standley's Motion for Rule 54(b) certificate on Standley's counterclaim, but did grant Standley's motion for prejudgment interest. On June 29, 2005, the Court held that Standley was the prevailing party on both DeGroot's claims and on Standley's counterclaim, and approved the amount of Standley's attorney fees and costs incurred. However, the Court reserved any decision actually granting attorney fees and costs until each side had an opportunity to brief the issue of whether it is premature to determine whether Standley is a prevailing party in regard to, and in light of, the pending claims of all parties to the consolidated cases.

Issue

The current issue before the Court is whether it is appropriate at this time for the Court to award Standley attorney fees and costs as a prevailing party against DeGroot in case number CV 2001-7777. Both sides have submitted written arguments.

Analysis

Although the Court has previously determined that Standley is the prevailing party regarding the claims in case number CV 2001-7777, in light of the consolidation of these two cases, along with the addition of the general contractor as a party and additional third party claims by the contractor against Standley, it appears that such a determination of who is the prevailing party is premature.

Idaho Rule of Civil Procedure 54(e)(1), regarding attorney fees, incorporates Rule 54(d)(1)(B) regarding the determination of a prevailing party, which in turn provides:

Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, **the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties.** The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after **considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.** (Emphasis added.)

Before the consolidation of the two cases and thus, before Standley was brought back into the action as a party by way of Beltman's third party claim, it appeared that Standley had obtained the most favorable outcome that it could possibly obtain in the action. That is, Standley was granted a complete dismissal of the claims against it and the was awarded its counterclaim. *See, Daisy Mfg. Co., Inc. v. Paintball Sports, Inc.*, 134 Idaho 259, 999 P.2d 914 (Ct. App. 2000); and *Sanders v. Lankford*, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000). Admittedly, at the current time, the prospect of there being any "offset" of Standley's judgment on its counterclaim applied to any judgment entered against Standley on behalf of Beltman would only arise if Beltman assigns his judgment to DeGroot.

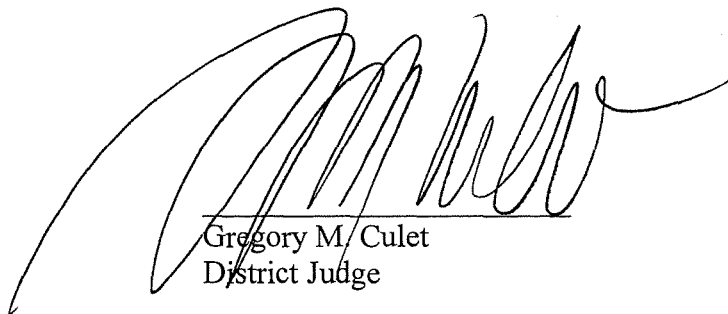
However, with Standley having been brought back into the case as a third party defendant, the possibility exists that Standley, as a subcontractor, may be subject to indemnify the general contractor, Beltman, in the event of his liability to DeGroot. If such a contingency were to occur, and despite the fact that Standley will not have any judgment entered against it on behalf of DeGroot, the connected nature of these multiple claims is apparent, and the prospect still exists for multiple judgments on multiple claims,

necessitating the Court to consider “all of the issues and claims involved in the action and the resultant judgment or judgments obtained,” per Rule 54. When dealing with multiple parties and multiple claims, the Court is not required to make a discreet award of fees and costs on each claim. Rather, Rule 54(d)(1)(B) requires that the Court must determine who is the most prevailing party, and in doing so, the Court should evaluate the end result of the entire litigation in order to determine whether there is an overall prevailing party. *See Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 682 P.2d 640 (Ct. App. 1984).

It is correct that the majority of the cases cited by Plaintiffs in their memorandum involved only two parties, as opposed to multiple parties. *See, Joyce Livestock Co. v. Hulet*, 102 Idaho 129, 627 P.2d 308 (1981); *B. Kelly v. Hodges*, 119 Idaho 872, 811 p.2d 48 (Ct. App. 1991); and *Doe v Doe*, 128 Idaho 144, 911 P.2d 140 (Ct. App. 1996). However, the sum and substance of the holding in those cases is still applicable, that is that no determination of awards under Rule 54(d) and 54(e) should be made until the final resolution of the case. In this case, the Court has already denied Standley’s request for Rule 54 certification as a final judgment the summary judgment award on its counterclaim.

Accordingly, the Court reserves any ruling on attorney fees and costs until the final resolution of the case.

Dated this 18 day of August, 2005.



Gregory M. Culet
District Judge

CERTIFICATION OF SERVICE

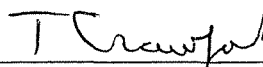
I HEREBY CERTIFY that a true and correct copy of the foregoing document was forwarded to the following persons on the 18 day of August, 2005.

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ORIGINAL

Attorneys for Third Party 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/Counterdefendants,

v.

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

Defendant.

CHARLES DEGROOT, and DEGROOT
DAIRY, LLC,

Plaintiffs,

v.

BELTMAN CONSTRUCTION, INC.,
d/b/a BELTMAN WELDING AND
CONSTRUCTION, a Washington
corporation,

Defendant/Third Party Plaintiff.

v.

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

Third Party Defendants.

Case No. CV 01-7777


Case No. CV 05-2277

**THIRD PARTY DEFENDANT
STANDLEY'S MOTION FOR
SUMMARY JUDGMENT**

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

DATED this 20 day of February, 2007.

LOPEZ & KELLY, PLLC

By: 

Michael E. Kelly, Of the Firm
Attorneys for Third Party Defendant Standley
Trenching, Inc., d/b/a Standley & Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of February, 2007, 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:

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