

3-26-2013

# American West Enterprises, Inc. v. CNH, LLC Respondent's Reply Brief Dckt. 40230

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"American West Enterprises, Inc. v. CNH, LLC Respondent's Reply Brief Dckt. 40230" (2013). *Idaho Supreme Court Records & Briefs*. 806.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/806](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/806)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

IN THE SUPREME COURT OF THE STATE OF IDAHO

AMERICAN WEST ENTERPRISES, INC., )  
 )  
 Plaintiff/Appellant, ) SUPREME COURT NO. 40230-2012  
 )  
 v. )  
 )  
 CASE NEW HOLLAND, INC., )  
 )  
 Defendant/Respondent. )  
 )

---

**RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF**

---

Appeal from the District Court of the Fifth Judicial District for Minidoka County,  
Before the Honorable Jonathan P. Brody, District Judge Presiding

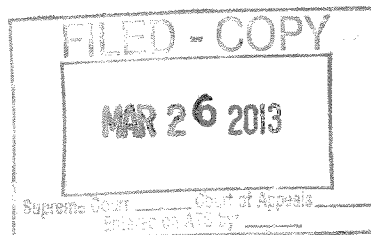
---

William A. Fuhrman  
Christopher P. Graham  
**Jones ♦ Gledhill ♦ Fuhrman ♦ Gourley, P.A.**  
225 North 9th Street, Suite 820  
Post Office Box 1097  
Boise, Idaho 83701  
Telephone: (208) 331-1170  
Facsimile: (208) 331-1529

Attorneys for Respondent

Brent T. Robinson  
ROBINSON, ANTHON & TRIBE  
P.O. Box 396  
Rupert, Idaho 83350  
Telephone: (208) 436-4717  
Facsimile: (208) 436-6804

Attorneys for Appellant



COPY

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES .....ii

I. ARGUMENT..... 1

    CNH Should be Awarded its Attorney Fees Both on Appeal and in the Underlying  
    Litigation..... 1

II. CONCLUSION .....3

## TABLE OF CASES AND AUTHORITIES

### Cases

<i>Blimka v. My Watch Wholesaler, LLC</i> , 143 Idaho 723, 728-29, 152 P.3d 594, 599-600 (2007).....	1
<i>Cannon Builders, Inc. v. Rice</i> , 126 Idaho 616, 624, 888 P.2d 790, 798 (Ct. App. 1995) .....	2
<i>City of McCall v. Buxton</i> , 146 Idaho 656, 665, 201 P.3d 629, 638 (2009) .....	1
<i>Esser Elec. v. Lost River Ballistics Technologies, Inc.</i> , 145 Idaho 912, 921, 188 P.3d 854, 863 (2008) .....	2
<i>Fritts v. Liddle &amp; Moeller Construction, Inc.</i> , 144 Idaho 171, 175-76, 158 P.3d 947, 950-51 (2007) .....	2
<i>Soignier v. Fletcher</i> , 151 Idaho 322, 326, 256 P.3d 730, 734 (2011) .....	2

### Statutes

Idaho Code § 12-120(3).....	1, 2, 3
Idaho Code § 28-2-314 .....	1
Idaho Code § 28-2-315 .....	1

## I. ARGUMENT

### **CNH Should Be Awarded its Attorney Fees Both on Appeal and in the Underlying Litigation.**

Whether a plaintiff's case sounds in contract or tort is no longer determinative as to whether attorney fees can be awarded under Idaho Code § 12-120(3). *Blimka v My Watch Wholesaler, LLC*, 143 Idaho 723, 728-29, 152 P.3d 594, 599-600 (2007). In *City of McCall v. Buxton*, for example, this Court specifically overruled a long line of prior legal malpractice cases that denied fee awards, holding that § 12-120(3) “does not require that there be a contract between the parties before the statute is applied; the statute only requires that there be a commercial transaction.” 146 Idaho 656, 665, 201 P.3d 629, 638 (2009).

Here, plaintiff/appellant American West Enterprises (“American West”) asserted claims for breach of the implied warranty of merchantability and breach of the implied warranty of fitness for a particular purpose against defendant/respondent Case New Holland, Inc. (“CNH”) pursuant to the law of sales as found in Idaho Code § 28-2-314 and § 28-2-315. R., p. 3-4. The sole basis for American West's claims against CNH was that American West entered into a commercial transaction with a third party for an allegedly malfunctioning tractor engine manufactured by CNH. Thus, although no contractual relationship existed or exists between American West and CNH, the basis for American West's breach of warranty claims arises directly from a commercial transaction.

In addition, American West moved to amend its Complaint to add a claim to recover as a third party beneficiary of a commercial transaction between CNH and Pioneer Equipment Company, the entity that sold American West the tractor at issue. Prior decisions by the Idaho appellate courts, including this Court, have indicated that a party asserting a claim that it should

recover as a third party beneficiary of another contract is sufficient grounds for an award of attorney fees under § 12-120(3). *See Cannon Builders, Inc. v. Rice*, 126 Idaho 616, 624, 888 P.2d 790, 798 (Ct. App. 1995) (“With respect to Crooks, we conclude that the nature of the suit, which includes a claim that Crooks was entitled to enforce the Rice-Cannon contract as a third-party beneficiary, was sufficiently based on commercial transaction to warrant an award of fees under § 12-120(3).”); *Soignier v. Fletcher*, 151 Idaho 322, 326, 256 P.3d 730, 734 (2011) (distinguishing between an attorney’s limited duty to a testamentary beneficiary and “the duty of care to non-clients on a third-party beneficiary theory”).

Moreover, in its Complaint, American West alleged that it was entitled to an award of attorney fees under Idaho Code § 12-120, *see R.*, p. 4-5, a factor this Court found significant in awarding attorney fees to the prevailing party in *Fritts v. Liddle & Moeller Construction, Inc.* 144 Idaho 171, 175-76, 158 P.3d 947, 950-51 (2007) (noting that “Little & Moeller, in their answer and counterclaim, as well as the Frittses themselves, both clearly allege that I.C. § 12-120 applies.”). What is clear from American West’s Complaint in this case is that a commercial transaction: (1) comprised the gravamen of American West’s lawsuit against CNH; (2) was integral to American West’s breach of warranty claims; and (3) constituted the basis upon which American West was attempting to recover. As a result, the Court should award CNH its attorney fees as the prevailing party for successfully defending against American West’s claims. *See Esser Elec. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 921, 188 P.3d 854, 863 (2008).

## II. CONCLUSION

For the above reasons, CNH respectfully requests that the Court overturn the district court's ruling denying CNH's motion for an award of attorney fees in this matter and award CNH its attorney fees on appeal and in the underlying litigation pursuant to Idaho Code § 12-120(3).

DATED this 26 day of March, 2013.

**Jones ♦ Gledhill ♦ Fuhrman ♦ Gourley, P.A.**

By: William A. Fuhrman  
WILLIAM A. FUHRMAN

CERTIFICATE OF SERVICE

The undersigned certifies that on the 26 day of March, 2013, he caused a true and correct copy of the foregoing to be forwarded by the method(s) indicated below, to the following:

Brent T. Robinson, Esq.  
ROBINSON ANTHON & TRIBE  
Attorneys at Law  
P.O. Box 396  
Rupert, ID 83350-0396

- U.S. Mail
- Hand-Delivery
- Facsimile (208)436-6804

  
\_\_\_\_\_  
WILLIAM A. FUHRMAN