

12-12-2012

# DeGroot v. Standley Trenching, Inc. Clerk's Record v. 3 Dckt. 39406

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Vol. 3 of 13

(VOLUME 3)

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

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LAW CLERK

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

**Plaintiffs-Counterdefendants-  
Appellants,**

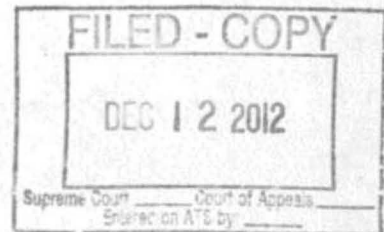
**-vs-**

**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**

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

Attorneys for Respondents

**SEE AUGMENTATION RECORD**

**39406**

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

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

Plaintiffs-Counterdefendants-  
Appellants,

-VS-

Supreme Court No. 39406-2011

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

Defendant-Counterclaimant-  
Respondent,

And

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

**Defendant-Respondent.**

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

HONORABLE GREGORY M. CULET, Presiding

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### Attorneys for Respondents

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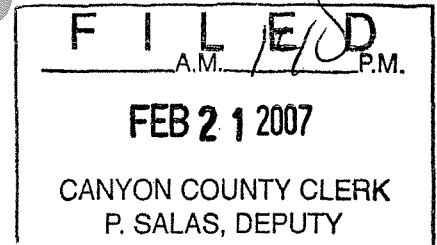
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

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 MEMORANDUM IN  
SUPPORT OF 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, PLLC, and submits this memorandum in support of its Motion for Summary Judgment.

**I.**

**INTRODUCTION**

In Beltman Construction, Inc., d/b/a Beltman Welding and Construction's ("Beltman") First Amended Third Party Complaint, six causes of action are alleged against the Third Party Defendant Standley. Four of these causes of action are alleged as arising out of contractual relations governed by the relevant provisions of the Idaho Uniform Commercial Code ("UCC"), including: (1) breach of contract; (2) rescission; (3) breach of warranties; and (4) breach of the implied covenant of good faith and fair dealing. The remaining two causes of action allege violation of the Idaho Consumer Protection Act and negligence.

The First Amended Third Party Complaint fails to state a claim upon which relief can be granted as to each of these six causes of action, because each is barred by the applicable statute of limitations. The four UCC actions are barred by the four year statute of limitations provided by I.C. § 28-2-725 and the Idaho Consumer Protection Act claim is barred by the two year statute of limitations provided by I.C. § 48-619.

In addition to these five causes of action, the First Party Plaintiffs Charles DeGroot and DeGroot Farms, LLC ("DeGroot"), have asserted that Defendant Beltman was negligent in the construction of the DeGroot Dairy. Beltman, as the Defendant/Third Party Plaintiff, has in turn alleged that the Third Party Defendant Standley was negligent in the design and engineering of the

manure handling system that was constructed and installed at the DeGroot Dairy. Any negligence cause of action against Standley – either malpractice or common law negligence – is barred under either the two year malpractice statute of limitations, or the four year statute of limitations under I.C. § 5-224.

Aside from the bar of the statute of limitations, DeGroot and Beltmans' negligence claim against Standley should be dismissed because negligent breach of contract does not constitute a separate tort under Idaho law, and further, because economic loss cannot be recovered in tort.

In order for a tort action to arise out of the alleged misperformance of a contract there must be a breach of a legally recognized "duty," and that duty must be something other than the duties that are included in the parties' contract. In this case, Beltman only alleges the breach of "design" and "engineering" duties by Standley. These are nothing more than the purported contractual obligations assumed by Standley. Even if not encompassed within the terms of the contract, tort liability for the breach of design and engineering duties arises out of the professional malpractice standards that require both professional standing and state licensing, do not apply to services that were provided by Standley to Beltman.

Additionally, even if Beltman's negligence action against Standley was not barred for the reasons just stated, it would still have to be dismissed under the "economic loss rule." Beltman seeks nothing more than damages arising out of the transaction itself – the contract for the construction of a manuring handling system – these damages are economic losses that cannot be recovered in an action for negligence under Idaho law.

As further argued below, the third-party action brought by Beltman against Standley must be dismissed on the grounds just stated and summary judgment granted to Standley.

## II.

### SUMMARY JUDGMENT STANDARD

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

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

In establishing the existence of an essential element, the non-moving party “must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact.” *Harris v. State*, 123 Idaho 295, 298, 847 P.2d 1156, 1156 (1992). Rather, the non-moving

party must come forward with admissible evidence upon which a reasonable jury could rely. *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999).

### III.

#### STATEMENT OF FACTS

In 1999 DeGroot entered into a contract with Beltman Construction, ("Beltman"), for the construction of a new 2,500 head dairy facility in Canyon County, including a manure disposal system. Ernest DeGroot Depo., at pg. 23, LL. 9-11, Kelly Aff. Exh. C. DeGroot has admitted that he never entered into any contract with Standley. Charles DeGroot 10/22/02 Depo., pg. 69, LL. 7-8; pg. 166, LL. 5-14; pg. 169, LL. 22-25, Kelly Aff., Exh. B; Charles DeGroot 01/27/04 Depo., pg. 211, LL. 19-22; Kelly Aff., Exh D. Standley has testified that his understanding was that his contract was with Beltman, not DeGroot. Standley Depo., pg. 123, LL. 1-6, Kelly Aff., Exh. A. Standley's contract with Beltman was his accepted bid. Standley Depo., pg. 237, L. 15-25, pg. 238, L. 1-2, Kelly Aff., Exh. A. Stan Beltman, principle of Beltman Construction, Inc., has likewise confirmed that he was the general contractor on the construction of the DeGroot Dairy and that the Third Party Defendant, Standley, was a subcontractor to Beltman Construction. Stan Beltman Depo., pg. 27, LL. 20-25, pg. 28, LL. 1-4, Kelly Aff., Exh. F.

Beltman, as the general contractor on the DeGroot project, accepted a bid from Standley for the installation of the manure disposal system at the proposed DeGroot Dairy. Standley's bid included equipment obtained from Co-Defendant J. Houle & Fils, Inc. ("Houle"), a Canadian corporation. Other than Beltman's acceptance of Standley's bid, as general contractor on the DeGroot project, there is no written or oral contract between Beltman and Standley concerning the



work that Standley undertook at Beltman's request on the DeGroot project. Standley Depo., pg. 74, LL. 13-23, Kelly Aff., Exh. A. Charles DeGroot has testified that he understood that Standley was a subcontractor to Beltman on the project. Charles DeGroot 01/27/04 Depo., pg. 212, LL. 13-16, Kelly Aff., Exh. D. Likewise, from Beltman's perspective, the bid is the only contract between Beltman and Standley. Stan Beltman 12/4/06 Depo., pg. 64, L21, pg. 65, L. 6, Kelly Aff., Exh. F.

Beginning in the Summer of 1999, and continuing through the start-up of the DeGroot Dairy in April 2000, Standley undertook the installation of the manure disposal system under his bid that had been accepted by Beltman. Tom Beltman 12/4/06 Depo., pg. 19, LL. 4-5, Kelly Aff., Exh. E; Charles DeGroot 01/27/04 Depo., pg. 237, LL. 11-16, Kelly Aff., Exh. D. One of the fundamental components of Standley's, was the use of "compost" bedding in the free stalls of the dairy barn. Standley Depo., pg. 185, L. 20-25, pg. 186, LL. 1-2, Kelly Aff., Exh. A.

When operation of the DeGroot Dairy was first started in April 2000 a pit run mixture of sand and gravel, instead of compost, was used as bedding in the free stalls. Charles DeGroot 10/22/02 Depo., pg. 71, L. 18-25, pg. 72, LL. 1-7, pg. 186, L. 5 to pg. 188, L. 4, Kelly Aff., Exh. B.

When the manure was flushed out of the dairy barn in the operation of the manure disposal system this pit run sand and gravel was also flushed out, and as a result interfered with the proper operation of the manure handling equipment. Standley Depo., pg. 118, LL. 10-24, Kelly Aff., Exh. A.

Maintenance problems arising from the use of the pit run sand and gravel in the free stalls quickly arose. Standley Depo., pg. 130, LL. 7-25, pg. 131, LL. 1-24. Standley attempted repairs of the equipment, but ultimately the manure disposal system that he had installed under his bid to Beltman

was substantially removed and replaced with several other alternatives over the course of the next four to five years.

#### IV.

#### ARGUMENT

##### A. **The First Amended Third Party Complaint Does Not State A Claim Against Standley Upon Which Relief Can Be Granted For Negligence**

##### 1. **Negligent Breach Of Contract Does Not Constitute A Tort Under Idaho Law**

Under Idaho law it is well settled that the mere failure to perform a contractual duty does not create an actionable tort. *Selkirk Seed Co. v. State Insurance Fund*, 135 Idaho 649, 652, 22 P.3d 1028, 1031 (2000). Even if a party to a contract is negligent in the performance of those contractual obligations, no tort liability arises because the mere negligent breach or non-performance of a contract will not sustain an action sounding in tort. *Taylor v. Herbold*, 94 Idaho 133, 138, 483 P.2d 664, 669 (1971). *See also, Cates v. Albertson's Inc.*, 126 Idaho 1039, 1035-36, 895 P.2d 1223, 1228-29 (1995). Tort liability requires the wrongful invasion of an interest protected by the law, not merely an invasion of an interest created by the agreement of the parties. *Just's Inc. v. Arrington Const. Co.*, 99 Idaho 462, 468, 583 P.2d 997, 1003 (1978).

The facts that Beltman has submitted to this Court in support of its claims against Standley do not allege anything other than a breach of contract. Beltman has not asserted that Standley had any obligation of performance – either was a matter of law or upon any assumed duty – to do anything other than what was required by the parties' contract. Stan Beltman Depo., pg. 70, LL. 11-18, Kelly Aff., Exh. F. In that context, even when all of the facts are construed most favorably toward Beltman, as is required on a motion for summary judgment, at best nothing more than

negligence in the performance of a contractual is established. It is undisputed under Idaho law that mere negligence in the performance of a contract does not establish tort liability. *Taylor, supra*. Therefore, Beltman's third party action for negligence against Standley must be dismissed.

2. **Beltman Has Neither Alleged – Nor Can It Establish – The Breach By Standley Of Any Tort Duty That Is Separate And Distinct From The Duties Created By Contract**

Even though it is well settled under Idaho law that the mere breach of contract cannot give rise to an action in tort, it also must be acknowledged that the performance of a contract can create circumstances for the commission of a tort based upon the existence of a duty separate and distinct from the duties imposed by the contract. *Just's Inc. v. Arrington Const. Co.*, 99 Idaho 462, 468, 583 P.2d 997, 1003 (1978). In order to establish tort liability arising out of the performance of a contract, one of two situations must exist. Either there has been a breach of a duty that has been voluntarily assumed and undertaken by the party performing the contract, *Steiner Corp. v. American Dist. Tele.*, 106 Idaho 787, 790, 683 P.2d 435, 438 (1984); or there has been a breach of a duty, the performance of which is imposed by law, such as a statutory requirement or obligation, *Sumpter v. Holland Realty, Inc.*, 140 Idaho 349, 353-54, 93 P.3d 680, 684-85 (2004).

Beltmans' third party claims against Standley rely upon nothing more than that it failed to perform obligations that he was contractually bound to perform. Beltman makes no allegation that there existed any breach of a duty upon which tort liability can be based – independent of the contractually-imposed duties – that Standley either undertook to perform, or that Standley was required to perform as a matter of law. In the absence of any allegation, or any facts that could support such an allegation, of a breach of a tort duty, Beltman's third party negligence claim against

Standley must be dismissed. *Shacocass v. Arrington Construction Co.*, 116 Idaho 460, 464, 776 P.2d 469, 473 (Ct.App.1989).

**3. Standley Has No Tort Liability To Beltman For The Failure To Adequately Perform Design Services**

The original action that was brought by DeGroot directly against Standley in 2001, which was dismissed on summary judgment, did not allege negligence. In that action DeGroot sought recovery against Standley based upon (1) breach of contract, (2) rescission, (3) breach of warranties, (4) breach of the covenant of good faith and fair dealing, and (5) a violation of the Idaho Consumer Protection Act. DeGroot's action against Beltman, which was filed on March 4, 2005, asserted the same causes of action as he had stated in this 2001 complaint against Standley, except that he omitted the Idaho Consumer Protection Act claim, and substituted in its place a claim for negligence.

DeGroot's complaint against Beltman contained a single solitary allegation involving the provision of engineering and design services by Standley:

15. At all relevant times, Plaintiffs relied upon Defendant's knowledge, representations, expertise and experience to design and construct a properly functioning dairy for Plaintiffs. In connection with this, Plaintiffs relied on Defendants to hire subcontractors who would provide goods and services free of defects.

DeGroot's five-paragraph negligence claim against Beltman is entirely silent about the provision of engineering and design services. It alleges as follows:

**COUNT FIVE**  
**Negligence**

53. Plaintiffs incorporate and reallege by reference all the allegations contained in paragraphs 1 through 53 above.

54. Defendant owed Plaintiffs a duty of reasonable care in the construction and maintenance of the dairy facility located at 10394 Melmont Road, Melba, Idaho.

55. Defendant acted carelessly, recklessly and negligently in failing to construct and maintain the Plaintiffs' dairy facility in a reasonable manner, resulting in numerous defects in and around the dairy facility.

56. As a direct and proximate result of the Defendant's negligent actions, Plaintiffs have suffered property damage in an amount exceeding \$150,000 to be proven with specificity at trial.

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

Under third party practice rules, the potential liability of the third party defendant is limited to the scope of liability that has been alleged against the defendant/third party plaintiff by the first party Plaintiff. I.R.C.P. 14(a). Here, notwithstanding the fact that DeGroot's negligence claim against Beltman was entirely silent in respect to either "engineering" or "design" functions, Beltman nonetheless, alleged such liability against Standley in the Third Party complaint. The general allegations set out in the First Amended Third Party complaint alleged the following:

8. In about July or August 1999, Beltman subcontracted the engineering, design, and installation of manure handling equipment to Standley for DeGroot's dairy being constructed in Canyon County, Idaho.

...

12. Beltman relied upon Standley's and Houle's knowledge, representations, expertise, and experience to design, engineer, and install a properly functioning manure handling system for DeGroot's Canyon County dairy.

Beltman then included the following allegations in his third party negligence claim against Standley:

**COUNT SIX**  
**Negligence**  
**(Standley & Houle)**

64. Beltman incorporates and realleges by reference all the allegations contained in paragraphs 1 through 63 above.

65. Standley owed Beltman a duty of reasonable care in the engineering, design, and installation of the manure handling equipment for which Beltman subcontracted for DeGroot's dairy.

66. Standley acted carelessly, recklessly, and negligently in failing to engineer, design, and install the manure handling equipment in a reasonable manner, resulting in numerous defects in the equipment and its operation.

67. Houle owed Beltman a duty of reasonable care in the manufacture and sale of the manure handling equipment purchased by Beltman.

68. Houle acted carelessly, recklessly, and negligently in failing to manufacture and sell the manure handling equipment in a reasonable manner, resulting in numerous defects in the equipment and its operation.

69. As a direct and proximate result of Standley and Houle's negligent actions, Beltman suffered special and general damages, in a sum in excess of \$100,000.00, the exact amount to be proven at trial.

70. Beltman has been required to retain the services of the law firm of Filicetti Law Office, P.A. to prosecute this action and is entitled to recover reasonable attorney fees and costs incurred pursuant to Idaho Code §§ 12-120 and 12-121.

(Emphasis added).

Aside from the fact that there is no evidence that Standley ever undertook – or had any legal obligation to perform – any engineering or design functions, under the parties' contract, Beltman's negligence claim is entirely premised upon the mis-performance by Standley of alleged professional duties upon which malpractice liability is based. Generally, under Idaho law malpractice liability is limited to those individuals who are licensed by the state to provide professional services. *Owyhee*

*County v. Rife*, 100 Idaho 91, 593 P.2d 995 (1979). In *Sumpter v. Holland Realty, Inc.*, 140 Idaho 349, 93 P.3d 680 (2004) the Idaho Supreme Court declined to extend professional malpractice liability to real estate brokers. In doing so the Court noted that generally malpractice liability has been limited to those professions specifically recognized by statute (I.C. §§ 30-1303(1) and 53-615(8)(a)) and that, “including real estate agents in the list of professional services cited above would be inconsistent with the underlying training and educational foundation of every other occupation specifically designated as professional by the legislature.” 140 Idaho at 352, 93 P.3d 683.

Likewise in this case, even assuming Standley may have entered into a contract with Beltman to “engineer” and “design” the manure handling system for the DeGroot dairy, in no sense were the services that Standley was to provide – and did provide – in the nature of professional design and engineering services for which malpractice liability would attach. It is undisputed that Standley was neither a licensed engineer, nor a licensed architect. Such professional standing and licensing is required in order to impose professional malpractice liability arising out of negligence. *Nerco Minerals Co. v. Morrison Knudsen Corp.*, 140 Idaho 144, 149-150, 90 P.3d 894, 899-900 (2004).

Standley was not tendering professional design and engineering services to Beltman, and this fact was known to Beltman. Stan Beltman Depo., pg. 26, L. 22, pg. 27, L 4, Kelly Aff., Exh. F, Standley had no independent tort duty, as a matter of law, for the provision design and engineering services. Consequently in the absence of any duty, other than those duties stated in the parties’ contract, summary judgment must be granted to Standley on Beltman’s negligence claim.

4. **Even If Beltman Could State A Claim For “Design Malpractice” Against Standley, That Claim Would Be Barred Under Either The Two Year Statute of Limitations For Malpractice Claims, Or The Four Year General Statute of Limitations**

A cause of action arises at the time that “some damage occurs.” *Lapham v. Stewart*, 137 Idaho 582, 585-87, 51 P.3d 396, 399-401 (2002); *Rice v. Lister*, 132 Idaho 897, 980 P.2d 561 (1999); and *Elliott v. Parsons*, 128 Idaho 723, 918 P.2d 592 (1996). In construction cases there also exists a potential six year statute of repose, I.C. § 5-241,<sup>1</sup> which only applies in those cases involving a tort cause of action where that action has not “previously accrued.” The six year statute of repose provided by I.C. § 5-241 only comes into play if no cause of action otherwise begins to accrue as a result of the occurrence of “some damage” within that six year period. As stated by the Idaho Court

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<sup>1</sup> Idaho Code § 5-241 has been characterized as a “statute of repose,” in Idaho’s appellate decisions. *See e.g., See e.g., Easterbrook v. State*, 124 Idaho 680, 684, 863 P.2d 349, 353 (1993) (“[T]he statute of repose in I.C. § 5-241 does not apply in this case.”). The difference between a statute of repose and statute of limitations is stated in the following definition of a statute of repose provided in BLACK’S LAW DICTIONARY:

**statute of repose.** A statute that bars a suit a fixed number of years after the defendant acts in some way (as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered any injury. Cf. STATUTE OF LIMITATIONS.

“A statute of repose . . . limits the time within which an action may be brought and is not related to the accrual of any cause of action; the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations which begins running upon accrual of the claim, the period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.” 54 C.J.S. *Limitations of Actions* § 4, at 20-21 (1987).

BLACK’S LAW DICTIONARY, at pg. 1423, (7th ed., 1999, West Publishing).



of Appeals in *Hibbler v. Fisher*, 109 Idaho 1007, 712 P.2d 708 (Ct.App.1985), the six year limited discovery exception provided by I.C. § 5-241 only tolls the running of the two year statute of limitations if during that period the claimant, “**reasonably did not discover the latent defect.**” 109 Idaho at 1012, 712 P.2d at 713 (emphasis added). *See also, Nerco Minerals*, 140 Idaho at 150, 90 P.3d at 900 (“[B]ecause the date of accrual is undisputed by the parties and because it arose before the final completion set out in I.C. § 5-241(a), that statute is inapplicable; . . .”).

There is absolutely no dispute among the parties to this action that “some damage” in respect to all damage claims arising from the alleged failure to properly design and construct the manure handling system arose no later than April 2000, when that system was first put into use and failed to operate to the satisfaction of DeGroot, and that the statute of limitations began to run as of that date.

This action was commenced in March 2005. Therefore, Beltman’s third party negligence cause of action against Standley is barred by the statute of limitations, regardless of whether the claim is considered to be one for “malpractice” that is governed by the two statute of limitations declared in I.C. § 5-219.4; or whether the claim is subject to the “catch-all” four year statute of limitations (I.C. § 5-224). The statute of limitations for a malpractice action ran in April 2002, and the statute of limitations under the catch-all four year statute of limitations ran in April 2004, both of which occurred before this action was filed in March 2005.

Consequently, Beltman’s negligence claim against Standley should be dismissed as barred under the applicable statute of limitations, and summary judgment entered for Standley on the negligence cause of action.

**5. Even If The Facts Supported Beltman's Negligence Claim Against Standley, Any Recovery Upon That Claim Is Barred Under The "Economic Loss" Rule**

The parties to a contract owe no duty to exercise due care to avoid purely economic losses. *Duffin v. Idaho Crop Imp. Ass'n*, 126 Idaho 1002, 895 P.2d 1195 (1995), citing, *Clark v. International Harvester Co.*, 99 Idaho 326, 336, 581 P.2d 784, 794 (1978). The long-standing precedent under Idaho law is that an "economic loss" encompasses the costs of repair and replacement of defective property that is the subject of the transaction, as well as commercial loss for inadequate value and consequent loss of profits or use. *Salmon Rivers Sportsman Camps, Inc. v. Cessna Air. Co.*, 97 Idaho 348, 351, 544 P.2d 306, 309 (1975). Economic loss should be distinguished from property damage, which is properly recoverable in tort. Property damage encompasses damage to property other than that which is the subject of the transaction. See also, *Ramerth v. Hart*, 133 Idaho 194, 196, 983 P.2d 848, 850 (1999); and *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987).

The Idaho Supreme Court recently reaffirmed a grant of summary judgment on the basis of the economic loss rule in *Blahd v. Smith*, 141 Idaho 296, 108 P.3d 996 (2005). The *Blahd* case arose from the sale of a residential home, which the buyers (the Blahds) subsequently discovered was not structurally sound due to poor compaction of the soils beneath the house. In addition to the sellers, the Blahds sued the developer of the subdivision where the property was located as well as an engineer who had previously opined that the soil in that area was adequate for residential construction. The district court granted summary judgment to the developer and engineer on the basis of the economic loss rule.

On appeal, the Blahds argued that any damage to the house was property damage and that the subject of the transaction was the improperly filled and compacted lot – not the house that was later constructed on that lot. In affirming the grant of summary judgment by the lower court, the Idaho Supreme Court noted that the word “transaction,” for purposes of the economic loss rule, does not mean a business deal – it means the subject of the lawsuit. “It is the subject of the transaction that determines whether a loss is property damage or economic loss, not the status of the party being sued.” 141 Idaho at 301, 108 P.3d at 1001. The Court held that the subject of the transaction was both the lot and the house, that the alleged damages to the house were purely economic, and that Blahd’s claims against the developer and engineer were barred by the economic loss rule. *Id.*

The damages that Beltman is seeking against Standley here place this case squarely within the long-standing rule that prohibits the recovery of economic losses in a negligence action. Beltman has made no claim for any personal injury, or for any property damage other than those losses that were the very subject of the transaction itself – Standley’s construction and installation of the manure handling system. The Idaho Supreme Court has been consistent in its application of the rule that purely economic damages are not recoverable in a negligence action. Accordingly, Standley is entitled to summary judgment as a matter of law on Beltman’s negligence claim based upon the economic loss rule.

**B. Beltman’s Remaining Claims Are Barred By The Applicable Statutes Of Limitations**

Apart from the negligence claim (Count Six), which has been addressed in the argument set out just above, Beltman has also alleged five other causes of action in the First Amended Third Party

Complaint, all of which should be dismissed, and summary judgment granted to Standley on the basis that each of these claims is barred by the applicable statute of limitations.

The determination of the applicable statute of limitations is a question of law for the court. *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 388, 403, 111 P.3d 73, 88 (2005). With the exception of the action alleged under the Idaho Consumer Protection Act, which is governed by a two year statute of limitations, each of these remaining claims are based upon Article 2 of Idaho's Uniform Commercial Code, Therefore, the four year statute of limitations stated in I.C. § 28-2-725 applies. Consequently, based upon the April 2000 date of accrual of these causes of action<sup>2</sup> and the March 2005 date of the filing of this action, each of these claims must be dismissed as barred by the statute of limitations and summary judgment granted to Standley.

**1. The Applicable Two Year Statute Of Limitations Bars The Consumer Protection Act Claim**

Count Five of Beltman's First Amended Third Party Complaint (¶¶ 58-63) states a cause of action alleging a violation of the Idaho Consumer Protection by Standley. This cause of action must be dismissed because it was commenced after the two year statute of limitations provided in I.C. § 48-619, as set out immediately below, had already run.

**48-619. Limitation of action.** – No private action may be brought under this act more than two (2) years after the cause of action accrues.

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<sup>2</sup> Based on the deposition testimony of Stan Beltman, it is arguable that the date of accrual for the causes of action were actually the summer of 1999. See, Stan Beltman Depo., p. 105, LL. 5-17, Exh. "F."

A cause of action under the Idaho Consumer Protection Act arises at that point that there is an “ascertainable loss of money or property,” as stated by the Idaho Court of Appeals in *Haskin v. Glass*, 102 Idaho 785, 640 P.2d 1186 (Ct.App.1982):

I.C. § 48-608(1) of the ICPA provides that “[a]ny person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by . . . [the] act,” may file an action for damages. We do not construe this language to require that a purchase or lease be “completed” in order for an action to be brought. However, we have reviewed the regulations promulgated by the Idaho Attorney General pursuant to I.C. § 48-604(2), the decisions of the Idaho Supreme Court interpreting the ICPA to date, and cases reported under 15 U.S.C. § 45(a)(1), which are deemed guides to construction of the ICPA under I.C. § 48-604(1). We find no authority for applying the ICPA to a merely contemplated transaction, where there was no contract. We hold, as we believe the trial court intended, that a claim under the ICPA must be based upon a contract. [footnote omitted] The trial court correctly denied leave to amend the counterclaim because the renters did not enter into a contract with the owners to purchase the property.

102 Idaho at 788, 640 P.2d at 1189.

This action was filed against Beltman by DeGroot on March 4, 2005. Beltman filed the initial third party complaint against Standley on March 22, 2005. There is no dispute between the parties in this action that the first alleged ascertainable loss suffered by DeGroot and Beltman occurred in April 2000 (also see footnote 2). For a viable claim to be stated under the Idaho Consumer Protection Act, that claim would have to have arisen no sooner than March 4, 2003 in order to avoid the bar of the two year statute of limitations stated in I.C. § 48-619.

Summary judgment should be granted to Standley on Beltman’s third party claim based upon the Idaho Consumer Protection Act, as being barred by the two-year statute of limitations stated in I.C. § 48-619.

2. **Beltman's Breach Of Contract And Breach Of Warranty Claims Are Barred By The Applicable Four Year Statute Of Limitations**

Beltman has stated separate third party claims against Standley for breach of contract (§§ 17-24); breach of warranties (§§ 35-52); and breach of the implied covenant of good faith and fair dealing (§§ 53-57). They have premised this claims upon violations of Article 2 of the Idaho Uniform Commercial Code. *See e.g.*, DeGroot Complaint at, §§ 3, 5, 13, 15, 16, 19, 21, 43, 44, 45, 46, 47, 48, 49, 50, and 51; *see e.g.*, Beltman First Amended Third Party Complaint at, §§ 6, 7, 9, 10, 12, 13, 15, 37, 39, 41, 43, 44, 45, 47, 48, 49, and 50.

As set out immediately below, a four year statute of limitation is provided in I.C. § 28-2-725 for actions arising under Article 2 of the Idaho Uniform Commercial Code:

**28-2-725 STATUTE OF LIMITATIONS IN CONTRACTS FOR SALE.**

– (1) An action for breach of any contract for sale must be commenced within four (4) years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

In *Farmers National Bank v. Wickham Pipeline Construction*, 114 Idaho 565, 759 P.2d 71 (1988) the Idaho Supreme Court held that the four year statute of limitations provided by I.C. § 28-2-725 governs all contract actions arising under Article 2 of the UCC. The Court reasoned as follows:

At least two statutes of limitation are potentially applicable to the breach of contract action; they are I.C. § 28-2-725, providing for a 4-year limitations period, [footnote omitted] and I.C. § 5-216, [footnote omitted] providing for a 5-year limitations period. We hold that I.C. § 28-2-725 controls all actions for breach of contract for the sale of goods, including the instant action.

Chapter 2 of the Uniform Commercial Code, as adopted by Idaho, controls the instant action. As I.C. § 28-2-102 states, “Unless the context otherwise requires, this chapter [Chapter 2, Sales] applies to transactions in goods. . . .” The pipe in this case constituted “goods.” “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale. . . .” I.C. § 28-2-105(1). At the time of identification to the instant contract for sale, the pipe was movable and clearly constituted “goods.” Thus, under I.C. § 28-2-102, Chapter 2 of Idaho’s version of the U.C.C. applies to the instant action. Further, I.C. § 28-2-725 is a specific statute, and I.C. § 5-216 is a more general statute. Under the general rule of statutory construction a more specific statute controls over a more general statute. *Maxwell v. Cumberland Life Ins. Co.*, 113 Idaho 808, 748 P.2d 392 (1987); *Mickelsen v. City of Rexburg*, 101 Idaho 305, 612 P.2d 542 (1980). As the Comments to Official Text, following I.C. § 28-2-725, state: “This Article [Chapter] takes sales contracts out of the general laws limiting the time for commencing contractual actions and selects a four-year period as the most appropriate. . . .”

114 Idaho at 569, 759 P.2d 75 (bracketed references to “footnote omitted,” added). Because an action for breach of the implied covenant of good faith and fair dealing is purely a derivative action of the underlying contract, the same statute of limitations should apply to that action as the underlying contract action. *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.”).

Furthermore, in cases involving the purely economic losses, such as those that are at issue in this case, the Idaho Supreme Court has stated that the four year UCC statute of limitations governs breach of warranty actions. *Oats v. Nissan Motor Corp. in the U.S.A.*, 126 Idaho 162, 168-172, 879 P.2d 1095, 1101-1105 (1994).

It is axiomatic that an action based upon a breach of contract does not arise, and the applicable statute of limitations does not begin to run, until a breach actually occurs. *Balivi Chemical Corp. v. Industrial Ventilation, Inc.*, 131 Idaho 449, 451-52, 958 P.2d 606, 608-09 (Ct.App.1998). Again, it is undisputed between the parties to this action that at the latest, the allegations upon which Beltman's breach of contract and related causes of action arose was in April 2000. Therefore, based upon the March 4, 2005 date this action was commenced, the four year statute of limitations provided by I.C. § 28-2-725 bars Beltman's claims for breach of contract (Count One); breach of warranties (Count Three), and breach of the implied covenant of good faith and fair dealing (Count Four). Summary Judgment should be granted to Standley on each of these claims stated in the First Amended Third Party Complaint.

**3. The Rescission Claim Is Barred By The Doctrine of Laches**

The only remaining cause of action stated in the First Amended Third Party Complaint is Count Two – Rescission. Beltman specifically claims the right of rescission provided in I.C. § 28-2-608 of the Idaho adoption of the Uniform Commercial Code. This section provides as follows:

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

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or



(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

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

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

The general rule is that although rescission is generally categorized as an equitable remedy, when the UCC rescission remedy is invoked that cause of action is also governed by the four year statute of limitations provided at I.C. § 28-2-725. *See*, 4B Anderson on the Uniform Commercial Code, § 2-725:95 *Rescission* (2001 rev., West Group). Very few appellate courts have directly addressed this question. Two Montana decisions have held that absent some evidence that the defendant somehow delayed discovery of the cause of action, there is no reason under the doctrine of laches to apply a longer period than the four years provided by the UCC statute of limitations to bring an action to enforce a request for rescission. *McGregor v. Mommer*, 714 P.2d 536 (Mont. 1986); and *Brabender v. Kit Manufacturing Co.*, 568 P.2d 547 (Mont. 1977).

In this instance, not only did revocation not occur within a reasonable time for discovery of the alleged defects, revocation of the manure handling equipment was never made to Standley. Stan Beltman clearly testified that he never requested of Standley to return the purchase money for the manure handling equipment. Stan Beltman Depo., pg. 59, L. 8-25, pg. 60, LL. 1-7, Kelly Aff., Exh. F.

It is undisputed that DeGroot's right of rescission arose in April 2000. The UCC statute upon which he relies requires that the right of rescission be exercised, "within a reasonable time after the buyer discovers or should have discovered the ground for it." Because this action was not commenced until March 2005, the four year statute of limitations provided by I.C. § 28-2-725 bars the attempt at rescission at this late date as revocation clearly did not occur within a reasonable time frame.

V.

### CONCLUSION

Summary judgment should be granted to Standley and the First Amended Third Party Complaint dismissed in its entirety.

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:

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

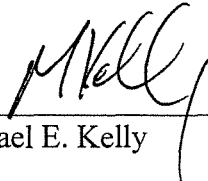
- ☐ U.S. Mail  
☒ Hand-Delivered  
☐ Overnight mail  
☐ Facsimile

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

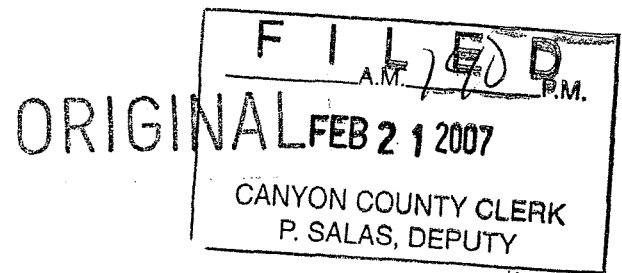
- ☐ U.S. Mail  
☒ Hand-Delivered  
☐ Overnight mail  
☐ Facsimile

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

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

  
\_\_\_\_\_  
Michael E. Kelly

Michael E. Kelly, ISB #4351  
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LOPEZ & KELLY PLLC  
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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. CV05-2277

**AFFIDAVIT OF COUNSEL IN  
SUPPORT OF THIRD PARTY  
DEFENDANT STANDLEY'S  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF IDAHO                     )  
  .ss  
COUNTY OF ADA                     )

I, Michael Kelly, being first sworn, do hereby depose and state under penalty of perjury:

1. That I am a member of the firm of Lopez & Kelly, PLLC, and one of the attorneys representing Third Party Defendant Standley Trenching, Inc. in regard to the above captioned matter and as such, am familiar with the facts and circumstances of this case and make this affidavit based upon my own personal knowledge;
2. That attached hereto as Exhibit "A" is a true and correct copy of the relevant portions of the deposition transcript of Kurt Standley, dated January 28, 2004.
3. That attached hereto as Exhibit "B" is a true and correct copy of the relevant portions of the deposition transcript of Charles DeGroot, dated October 22, 2002.
4. That attached hereto as Exhibit "C" is a true and correct copy of the relevant portions of the deposition transcript of Ernest DeGroot, dated December 12, 2003.
5. That attached hereto as Exhibit "D" is a true and correct copy of the relevant portions of the deposition transcript of Charles DeGroot, dated January 27, 2004.
6. That attached hereto as Exhibit "E" is a true and correct copy of the relevant portions of the deposition transcript of Tom Beltman, dated December 4, 2006.
7. That attached hereto as Exhibit "F" is a true and correct copy of the relevant portions of the deposition transcript of Stan Beltman, dated December 4, 2006.

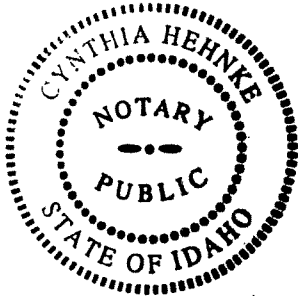
FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 20 day of February, 2007.

LOPEZ & KELLY PLLC

By: M Kelly  
Michael E. Kelly, Of the Firm  
Attorneys for Third Party Defendant Standley  
Trenching, Inc., d/b/a Standley & Co.

SUBSCRIBED AND SWORN before me this 20<sup>th</sup> day of February, 2007.



Cynthia Hehnke  
Notary Public for Idaho  
Residing in the State of Idaho  
My Commission Expires: 2/6/10.

**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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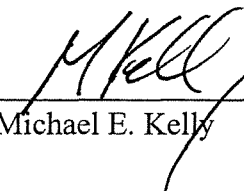
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William A. McCurdy  
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CRAWFORD, & MCCURDY  
Washington Federal Plaza  
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Boise, ID 83701-1009

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\_\_\_\_\_  
Michael E. Kelly

# **Exhibit A**



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

CHARLES DeGROOT, and DeGROOT  
FARMS, LLC,

Plaintiffs,

vs.

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

Defendants.

Case No. CV 2001-7777

DEPOSITION OF KURT STANDLEY

January 28, 2004

Nampa, Idaho

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

**COPY**



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

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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.

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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.

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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,

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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?

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1   simplistic test that you do. You take a plastic Coke  
2   bottle with the lid on it, you know, just that you  
3   get, you drink Coke.  
4       Q. Like the small ones?  
5       A. Yeah, just anything that floats.  
6       Q. Okay.  
7       A. And you throw it in the lane and you time  
8   it, and there is -- and Troy can help you with that.  
9   There is a formula for that.  
10      Q. Do you recall what --  
11      A. I do not. It's a fairly simple deal. I  
12   mean, it's not true science, but it gives you an idea  
13   what your water flow is.  
14      Q. Do you recall what, based on this testing  
15   that you did with the Coke bottle, what your  
16   estimation of the gallons per minute that you were  
17   getting at the top of the free stalls?  
18      A. I don't remember that number.  
19      Q. Do you remember which free stall you tested?  
20      A. I do not.  
21      Q. Did you test more than one?  
22      A. I think we did.  
23      Q. Did you test all of them?  
24      A. Probably not the hospital barn. The north  
25   barn was on first. And the south barn was -- I'm

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1   going the say later. It seems like sometime later,  
2   six months, or something like that. It was later.  
3       Q. By the time you tested that, had problems  
4   been brought to your attention with the operation of  
5   the flush system?  
6       A. Yes.  
7       Q. At that point in time when you went out and  
8   did the tests after you received -- I'm assuming you  
9   received complaints from Chuck?  
10      A. I did.  
11      Q. When you went out and tested it, from your  
12   perspective, was it working fine?  
13      A. The system?  
14      Q. Yes.  
15      A. It was not.  
16      Q. What was wrong with it at this point in time  
17   when you come out in response to Chuck's complaints?  
18   What wasn't working right?  
19      A. I would say, the pumps and the separators.  
20   The flush worked fairly well, but he had bedded with  
21   pit run, and that created some problems.  
22      Q. Yeah. And I know you've contended that  
23   throughout this, and even before the litigation  
24   started, and that's an issue we'll explore separately.  
25      But from your perspective, tell me what

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1   problems you believed were caused by the sand being in  
2   the beds?  
3       A. Repeat that question.  
4       Q. What problems do you attribute with the  
5   system's functioning that were caused by the sand in  
6   the beds?  
7       A. On a percentage basis, or just you want me  
8   to go through it specifically?  
9       Q. Yes, please.  
10      A. The problem with using pit run for bedding  
11   is that it doesn't flush all that well. There will be  
12   rocks left in the lanes. Rocks have a way of  
13   attracting manure in your flush system and  
14   complicating your flush. But then, of course, it all  
15   goes down to the drains and drains over to your pumps,  
16   and, basically, just trashes your pumps.  
17      Then what sand you do pump, which is  
18   considerable, goes into your separation system, your  
19   screens, and your roller presses, and tears the shit  
20   out of them.  
21      Q. And I'm assuming I know the answer to this  
22   question: What was your understanding of the bedding  
23   that was going to be used at the DeGroot Dairy?  
24      A. It was going to be compost.  
25      Q. Who told you that?

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1       A. I believe Chuck did.  
2       Q. Do you remember when Chuck told you that?  
3       A. I do not.  
4       Q. Anyone else present when Chuck told you  
5   that?  
6       A. I couldn't remember.  
7       Q. Do you know how long Chuck used sand in the  
8   free stall beds?  
9       A. I do not.  
10      Q. So you don't know when he switched to  
11   compost?  
12      A. No.  
13      Q. You've talked about rocks. Do rocks  
14   naturally occur, based on your experience? I mean, do  
15   they show up in the feed?  
16      A. They do.  
17      Q. Do cows track them in, or bring rocks into  
18   the free stalls coming through the holding pens and  
19   whatnot?  
20      A. They do.  
21      Q. So at some level, I would assume, the  
22   equipment has got to be able to handle rock?  
23      A. It does.  
24      Q. And, in fact, correct me if I'm wrong, the  
25   slope screens have rock collectors on them?

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1 A. They do.  
 2 Q. So at some level, you've got to expect rock  
 3 in the system?  
 4 A. You do.  
 5 Q. Does the same hold true for sand?  
 6 A. You do.  
 7 Q. I mean, the cows --  
 8 A. Particularly this environment,  
 9 geographically.  
 10 Q. Sure. The cows track sand in, the wind  
 11 blows it in, it's in the feed?  
 12 A. Correct.  
 13 Q. So you've got to anticipate a certain level  
 14 of sand; right?  
 15 A. That's true.  
 16 Q. And do the slope screens have sand traps on  
 17 them as well?  
 18 A. Rock trap, sand trap, the same thing.  
 19 Q. And that's just designed to get --  
 20 A. Primarily.  
 21 Q. -- large, hard material out of the system?  
 22 A. Anything that will drop out due to velocity  
 23 comes back down that tube.  
 24 Q. Who designed the reception pit?  
 25 A. I do not know.

Page 121

1 Q. Did you have any input on the depth of the  
 2 reception pit?  
 3 A. None.  
 4 Q. None, whatsoever?  
 5 A. Well, some, I guess. It wasn't adhered to.  
 6 So I guess in answer to your question, no, I didn't  
 7 have any.  
 8 Q. Okay. What --  
 9 A. We ordered -- well, go ahead. Excuse me.  
 10 Q. Well, no, I'm interested. You indicated  
 11 that at least some level, you were involved. And then  
 12 according to you, your involvement was ignored?  
 13 A. We ordered ten-foot pumps, because we were  
 14 told that a ten-foot pit would be placed, and an  
 15 eight-foot pit was actually built. So that's my level  
 16 of decision there.  
 17 Q. Do you know who made the decision to make it  
 18 an eight-foot pit?  
 19 A. I do not know.  
 20 Q. Did you ever talk to Tom Beltman, and ask  
 21 him, "What's going on? I ordered ten-foot pumps, and  
 22 this is an eight-foot pit"?  
 23 A. I think Jeff and him had conversation on  
 24 that.  
 25 Q. Okay.

Page 122

1 A. But I don't know that I did.  
 2 Q. Okay. Did Jeff ever relay to you the  
 3 substance of that conversation?  
 4 A. I think he has, and I don't recall it at  
 5 this time. But whether the pit is ten foot or eight,  
 6 as it pertains to the pump is irrelevant to the pump.  
 7 Q. What is it relevant to, from your  
 8 perspective?  
 9 A. Volume.  
 10 Q. Just volume of what it can hold?  
 11 A. Its volume. Your drainpipe is going to come  
 12 in there somewhere, and you start marrying your drains  
 13 back to your receptive pit. You get X amount of  
 14 volume due to elevation. That means you have to move  
 15 X amount of fluid this quick.  
 16 Q. What size drainpipe did you install at the  
 17 Troost dairy?  
 18 A. I didn't install drainpipe.  
 19 Q. Did you spec out the drainpipe at all on  
 20 that?  
 21 A. I did not.  
 22 Q. Who did?  
 23 A. Marion Vance.  
 24 Q. Do you know what size drain pipe's in use at  
 25 the Troost dairy?

Page 123

1 A. I don't.  
 2 Q. Earlier you talked about a farm show that  
 3 used to be held here at the Idaho Center. Did you  
 4 attend that farm show in 1999?  
 5 A. I did.  
 6 Q. Did you display Houle equipment at that  
 7 trade show?  
 8 A. I did.  
 9 Q. Was that the Houle equipment that had been  
 10 ordered for the DeGroot Dairy?  
 11 A. I believe it was.  
 12 Q. Did anything happen to any of the equipment?  
 13 And by that, I mean, the slope screens or the roller  
 14 presses, in transit from the farm show to the DeGroot  
 15 Dairy?  
 16 A. Yes, there was.  
 17 Q. What happened?  
 18 A. One of the screens fell off the trailer when  
 19 we were turning a corner in town.  
 20 Q. Who was driving?  
 21 A. I don't know. I can't remember.  
 22 Q. Is he still working for you?  
 23 A. No, he's not.  
 24 Q. Did you fire him over that?  
 25 A. No, not just that.

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1 A. Probably. I don't remember it specifically,  
 2 but I probably did.  
 3 Q. Would you have needed to know that in  
 4 connection with the work you were doing with the flush  
 5 system, the manure equipment, and piping --  
 6 A. Not what they are permitted for.  
 7 MR. KELLY: Let him finish.  
 8 THE WITNESS: I'm sorry.  
 9 Q. (BY MR. DINIUS) In connection with the work  
 10 you were doing, we talked about the flush system,  
 11 piping, manure equipment. Do you need to know how  
 12 many total animal or total animal units the dairy is  
 13 permitted for in connection with determining correct  
 14 sizes, pieces of equipment, pump sizes, et cetera?  
 15 A. You do.  
 16 Q. And you would have factored that into your  
 17 calculation?  
 18 A. I would have.  
 19 Q. If you didn't know, would you ask somebody,  
 20 "How big is this place going to be? What's he  
 21 permitted for?"  
 22 A. I would.  
 23 Q. Do you remember specifically having those  
 24 conversations with either Chuck, or Tom, or Stan  
 25 Beltman?

Page 129

1 A. I do.  
 2 Q. Who?  
 3 A. All of the above.  
 4 Q. Okay. But you just don't remember the  
 5 specific number?  
 6 A. No.  
 7 Q. That's fair, because I don't either.  
 8 Do you contend that anyone else is to blame  
 9 for the problems with the manure handling system at  
 10 the DeGroot Dairy?  
 11 MR. KELLY: Object to the form.  
 12 MS. WHARRY: Object to the form.  
 13 THE WITNESS: Do I contend -- repeat the  
 14 question.  
 15 Q. (BY MR. DINIUS) Do you contend that  
 16 anybody, aside from you and your company, not you  
 17 individually. But when I say "you," I mean, Standley  
 18 & Company. Do you contend that anybody else out there  
 19 is responsible for the damages that Chuck contends  
 20 have occurred as a result of this manure handling  
 21 system?  
 22 MR. KELLY: Same objection.  
 23 MS. WHARRY: Object to the form.  
 24 Q. (BY MR. DINIUS) You can still answer.  
 25 A. I do.

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1 Q. Who?  
 2 A. Chuck.  
 3 Q. Tell me what you think Chuck did to cause  
 4 the damages that he's complaining about.  
 5 A. He neglected his maintenance, and bedded  
 6 with pit run.  
 7 Q. Let's take each of those: neglected  
 8 maintenance and pit run. Well, we've talked about the  
 9 pit run, I think; haven't we?  
 10 A. Briefly.  
 11 Q. Okay. Tell me what, from your perspective,  
 12 Chuck did in using pit run to cause the problems with  
 13 the manure handling system.  
 14 A. In the system that he had, the simple  
 15 reception pit pump-up over separator, he put no  
 16 provisions in that for the sand and the rock that he's  
 17 going to get off that. So all the sand and rock go to  
 18 the pumps, and the pumps literally were plugged  
 19 repeatedly with sand and rocks.  
 20 The screen part of the separator, you would  
 21 get so much sand into the roller, and the roller sat  
 22 below the screen -- you've seen how it sits up -- that  
 23 the sand would build in there and literally stop the  
 24 rollers from rolling. And he wouldn't clean it out.  
 25 He would, but he wouldn't clean it out enough to --

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1 this thing would work, but it worked very, very poorly  
 2 because of that.  
 3 Q. What was the tension on the roller presses  
 4 set at initially?  
 5 A. I would have no idea.  
 6 Q. Who would know that in your company?  
 7 A. I don't think that we would have somebody  
 8 that would know. When you start running rock and  
 9 gravel through them, it's not a question, really. I  
 10 mean, you've got to let it happen. There was no  
 11 alternative whether you have the right amount of  
 12 tension or not. They were becoming rock crushers  
 13 basically. And you would watch them spit rocks out,  
 14 and it was just a nightmare.  
 15 Q. Well, shouldn't the slope screen rock  
 16 guards, or whatever, have caught those before they hit  
 17 the roller press?  
 18 A. Yeah, and I'm sure they did. And they were  
 19 probably filled within seconds. The magnitude and  
 20 volume of the sand and gravel was just astounding.  
 21 You are filling thousand cow barns or thousand foot  
 22 barns with -- you know, that bedding space is 16-foot  
 23 wide, maybe 17 -- I don't know what his exact number  
 24 is -- with sand and gravel, and it's tremendous.  
 25 Q. And I've heard you repeatedly refer to it as

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1 A. Or save --  
 2 Q. -- actually, you were going to put two  
 3 screens on one roller?  
 4 A. On one roller, thinking I could save the  
 5 price on one roller.  
 6 (Deposition Exhibit No. 17 was marked for  
 7 identification.)  
 8 Q. (BY MR. DINIUS) And Exhibit 17, which is  
 9 the package packing slip for the slope screen and  
 10 roller; right?  
 11 A. Yes.  
 12 (Deposition Exhibit No. 18 was marked for  
 13 identification.)  
 14 Q. (BY MR. DINIUS) Handing you what's been  
 15 marked as Exhibit 18. I assume that this is Troy  
 16 Hartzell's order for the slope screen and the roller  
 17 separator?  
 18 A. Mm-hmm.  
 19 Q. In the middle there it says, "Jeff will send  
 20 answers for 16 questions."  
 21 A. Mm-hmm.  
 22 Q. Do you know what that has to do with?  
 23 A. They have a questionnaire. They were just  
 24 developing their questionnaire for these kinds of  
 25 questions. Not everybody has three-phase power.

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1 Voltage -- the voltage number varies, depending on  
 2 where you go. We want to know what the bedding is,  
 3 length of lanes, just like you said, width of lanes,  
 4 elevation. I can't remember offhand. But questions  
 5 like that. Just general, you know, "What are we  
 6 trying to do here questions?"  
 7 Q. I see on there, Troy has written, "Bedding:  
 8 compost."  
 9 A. Mm-hmm.  
 10 Q. Do you know where he got that information  
 11 from? Is that something he got from you?  
 12 A. I would think not.  
 13 Q. Okay.  
 14 A. I don't know where he got it from.  
 15 Q. Okay. Did you place the order with Troy?  
 16 A. I can't say that I placed an order. What we  
 17 would do is sit down, he's the Houle guy. And we  
 18 would talk about all the things that we're going to  
 19 do, and he writes the order.  
 20 Q. So you don't remember telling him that the  
 21 bedding was going to be compost?  
 22 A. Well, I'm sure I did. It was just  
 23 understood that it was a compost bedded dairy.  
 24 Q. Tell me what you base that understanding on.  
 25 A. Conversations with Chuck and Beltman. It

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1 was never talked about being anything else. There was  
 2 never any conversation any other way than compost.  
 3 Q. Was there ever any discussions along the  
 4 lines that compost would ultimately be used? Because  
 5 correct me if I'm wrong, your manure handling  
 6 equipment, it makes compost; right?  
 7 A. It makes dry fiber --  
 8 Q. That is then --  
 9 A. -- composted.  
 10 Q. -- aged and dried and turned into compost?  
 11 A. Right.  
 12 Q. So that the start-up of a dairy, you  
 13 wouldn't have any compost; would you?  
 14 A. Not from your place, no, but you could  
 15 purchase it, just like you purchased the pit run.  
 16 Q. Is it expensive?  
 17 A. I don't know.  
 18 Q. Do you know if it's more expensive than pit  
 19 run or sand?  
 20 A. I wouldn't.  
 21 Q. Well, do you recall any conversations along  
 22 the lines that, once the dairy is up and running,  
 23 compost will be used?  
 24 A. It just was understood that the compost was  
 25 going to be the bedding source.

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1 Q. From the beginning on?  
 2 A. Yeah, from day one.  
 3 Q. And I mean, you base that understanding on  
 4 Chuck saying that specifically?  
 5 A. Yes.  
 6 Q. And he said that to you?  
 7 A. Repeatedly.  
 8 Q. Okay.  
 9 A. More than once.  
 10 Q. Okay. The first time he said it to you,  
 11 where were you at?  
 12 A. I can't remember.  
 13 Q. Was anybody with you?  
 14 A. I couldn't remember.  
 15 Q. Was it an in person meeting or telephone?  
 16 A. It was face to face.  
 17 Q. You said repeatedly. I mean, how often did  
 18 Chuck tell you?  
 19 A. I would say probably three to five times.  
 20 Q. Over the course of how many weeks or months?  
 21 A. Since the beginning.  
 22 Q. So over the course of several months, he  
 23 told you, you said three to five times?  
 24 A. And I'm generalizing. I mean, once you kind  
 25 of understand something, you don't go over it and over

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1 right, we wouldn't have been out there." Jeff has  
2 already done the paperwork and submitted it. Do you  
3 then throw away that paperwork or put it in the file?  
4 A. Usually what I'll do today, if we do those  
5 sorts of things, I put no charge on it and send it to  
6 the customer. So he knows that we were there, and we  
7 did this, and he has a record, also.  
8 And in our Chuck DeGroot period, we did not  
9 do that. We would just do the work, and forget about  
10 it.  
11 Q. Well, was there any specific instances with  
12 respect to the DeGroot Dairy, that John, or Jeff, or  
13 Mr. Bullock sent paperwork to you for work that they  
14 had done, that you decided not to charge Chuck for?  
15 A. I would think so. I don't have a specific  
16 in mind. But it usually works that way.  
17 Q. Well, what would you then do with the  
18 service order -- or I can't remember the exact  
19 terminology for the document that you use -- but you  
20 get this from Jeff. What do you do with that? Do you  
21 throw it away?  
22 A. I do or did.  
23 Q. Okay.  
24 A. And I've changed that, as I've said.  
25 (Deposition Exhibit No. 42 was marked for

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1 identification.)  
2 Q. (BY MR. DINIUS) I'm going to hand you  
3 what's been marked as Exhibit 42. Do you recognize  
4 that document?  
5 A. Just some notes that I've taken.  
6 Q. And that is your handwriting that's set  
7 forth in the three pages of Exhibit 42?  
8 A. It is.  
9 Q. When did you write those notes?  
10 A. I don't know.  
11 Q. Was it after the litigation was commenced or  
12 before?  
13 A. Well, I'm sure it was after the litigation,  
14 I would think.  
15 Q. Okay. I think we've already covered one, I  
16 asked you this morning. You are not aware of any  
17 actual contract between your company and Beltman for  
18 the services and material you provided at the DeGroot  
19 Dairy?  
20 A. Not as -- I mean, other than what you've  
21 seen, no.  
22 Q. Okay. And the only thing we've seen is your  
23 bid; right?  
24 A. Yeah.  
25 Q. So far? I mean, is that what you are

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1 talking about is the bid?  
2 A. Yeah.  
3 Q. No. 2 on page 1 of Exhibit 42, you wrote,  
4 "Standley's expertise was used as long as Mr. Beltman  
5 agreed with it. Those times when he did not, he hired  
6 others to do what he wanted."  
7 What are you talking about there?  
8 A. Oh, like the back end with the drains and  
9 that.  
10 Q. What about the drains did Mr. Beltman not  
11 agree with your approach to?  
12 A. Well, like I told you, we put one drain in,  
13 I would say, the hospital barn or the middle barn, and  
14 they didn't agree with that. So they dug it out and  
15 made it drain the other way.  
16 Q. So he didn't like the slope it was on?  
17 A. You would have to ask him.  
18 Q. Well, what do you remember? I mean, did he  
19 ever tell you the reason why it was dug up?  
20 A. Not that I recall. I don't think there was  
21 a reason. And, again, it goes back to that  
22 relationship thing, he didn't like what I did.  
23 Q. Well, did he ever tell you specifically what  
24 he didn't like about the drain line that your company  
25 laid behind the hospital barn?

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1 A. No.  
2 Q. Did he ever make any reference that it was  
3 off grade?  
4 A. No.  
5 Q. Because it doesn't make sense to me that he  
6 would go dig something up for no reason.  
7 A. Me either.  
8 Q. Did you ever ask him about that?  
9 A. No.  
10 Q. Say, "It's perfectly fine. Why did you dig  
11 it up?"  
12 A. I didn't.  
13 Q. Is that about the point you left the job,  
14 when he dug that back up?  
15 A. (Witness nodding head.)  
16 Q. Is that a "yes"?  
17 A. Well, I was trying to think. It's kind of a  
18 maybe yes. It's in and around that time, yeah.  
19 Q. Okay. You've got a sub (a) under No. 2 on  
20 Exhibit 42. "Hired others to do some drain line work  
21 after thinking Standley's incapable." What do you  
22 mean when you write that?  
23 A. That's just what we were talking about.  
24 Q. Well, are we talking about Tom Beltman now,  
25 not Stan?

# **Exhibit B**



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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A He was to take care of the manure handling.

Q And when you say "take care of." What do you mean?

A To provide for the flush system. And to provide for the manure handling.

Q Did you have a contract with Standley?

A No.

Q Did Beltman have a contract with Standley?

A I cannot answer that.

Q Did someone advise -- and by "someone" I mean either you or Beltman, or someone working for one of you -- provide Standley any written specifications on what Beltman wanted for all of this?

A That is, I think, in the area of the contractor. That is his area of expertise.

Q So the contractor, to your recollection, was supposed to give Standley the specs on what was to be done? Is that right?

A Could you rephrase that?

Q Could you read that back, please?

(Record was read back.)

THE WITNESS: That was between Beltman and his subcontractors. Because I had confidence in

Beltman as being the contractor. As far as to whom he let his subcontracts to.

Q (BY MR. McCURDY) Did you provide any specifications to Standley or anyone from Standley?

A No.

Q Did you provide any specs to Houle or anyone from Houle?

A No.

Q Did Beltman?

A Beltman can answer that question. I can't.

Q So you don't know?

A I do not know.

Q The reason I was asking. See, you have sued my client, saying that they were faulty in their design in this project. And I asked in the interrogatories about the basis for that. And I really didn't get any information.

So as you're sitting here today do you know of anything that my client, Houle, did wrong?

MR. DINIUS: And I'm going to object to the form. I think it mischaracterizes the claims.

To the extent you can answer his question as to problems with Houle equipment, go ahead.

MR. McCURDY: No, what Houle did wrong was

my question.

THE WITNESS: Their equipment I had a lot of the maintenance with that. Because when we started we weren't up front managing the dairy. We were in the back scooping manure.

Q (BY MR. McCURDY) Which portions of the Houle equipment needed -- well let me back up.

Is it your experience that equipment at the dairy needs maintenance?

A Yes.

Q So when you say the Houle equipment needed a lot of maintenance, are you saying that it needed more than ordinary?

A Yes.

Q What was it about the design that Houle was involved in that required an extraordinary amount of maintenance on the Houle equipment?

A The pumps were always -- I had to replace the casing a number of times.

Q How many?

A At least twice.

Q Over what period of time?

A The first eight months.

Q Why? What was happening to the casing?

A The casing became worn because of what

was -- there was sand in the bedding.

Q How did the sand get in the bedding?

A Initially we did the beds with sand. But the long-term was to use the separated manure as compost. Which we did.

Q But initially you used sand, correct?

A Correct.

Q Isn't it true that the specs that were given to Standley, assuming any were given, and the specs that were relayed to Houle, indicated that compost was going to be used as bedding? Isn't that true?

MR. DINIUS: Object to the form.

MR. McCURDY: What is wrong with the form?

MR. DINIUS: Number one, it is argumentative. Number two, he has already testified he didn't give any specs to Standley or Houle.

Q (BY MR. McCURDY) Can you answer the question?

MR. DINIUS: If you know the answer.

THE WITNESS: Could you rephrase -- repeat the question, please?

Q (BY MR. McCURDY) Isn't it true that if Standley and Houle were told anything about bedding, they were told that compost was going to be used?

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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 correct?

2 Q Correct.

3 A Yeah.

4 Q We got into this area of questioning  
5 because I was asking whether or not you had any --  
6 whether the dairy had any contract with Standley  
7 Trenching, Inc., d/b/a Standley & Company.

8 Was there a contract between the dairy and  
9 Standley Trenching, Inc., d/b/a Standley & Company?

10 A I have to refer that to the general  
11 contractor.

12 Q Because Beltman may have had a contract  
13 with this company. Is that why you are referring it  
14 to them?

15 A Yes.

16 Q And I'm not asking you whether Beltman had  
17 a contract with them. And I'm sorry if I confused  
18 you. I may be talking too fast. I know you have  
19 gotten used to Mr. McCurdy and he is a lot more  
20 deliberate and thoughtful than I am. But let me ask  
21 it again.

22 Did your dairy have any contractual  
23 relationship whatsoever with Standley Trenching,  
24 Inc., d/b/a Standley & Company?

25 A No.

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1 Q Did you have any involvement in  
2 supervising the work that was done for the dairy  
3 construction project?

4 A No.

5 Q That was Beltman?

6 A Yes.

7 Q Did you have anything to do with the  
8 acceptance of the completion of work by Standley  
9 Trenching, Inc., d/b/a Standley & Company?

10 A Could you rephrase that, please?

11 Q Let me take a different approach to this.  
12 I understand that in April 2000 you started your  
13 dairy up.

14 A Yes.

15 Q At the time the dairy was started up was  
16 the manure handling system in operation?

17 A Briefly.

18 Q Was it operating?

19 A It did operate.

20 Q And do you know whether or not there was a  
21 startup of that manure handling system before you  
22 moved the herd in to use the dairy premises?

23 A The system was such that you cannot run it  
24 without the product in it, which is manure water.

25 Q So you need to have the manure water and

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1 the fibers in there to see if it is going to  
2 separate it out and work. Correct?

3 A Yes.

4 Q Do you know whether or not there was a  
5 startup of the flush system before the herd was  
6 moved into the dairy stalls?

7 A I would have to refer that to Ernest.

8 Q You weren't present to see the flush  
9 system working before you moved the herd on?  
10 Is that correct?

11 A There were so many things going on. A lot  
12 of times you take for granted that you think it is  
13 working. I'm sure there were some dry runs to see  
14 that the water did come down. It is one thing to  
15 run it with manure in the alleys or with nothing in  
16 it. With nothing in it, it will just flush. But to  
17 be purely operational you have to have product in  
18 there.

19 Q I understand that. And I'm trying to  
20 separate those two distinctions out that you just  
21 made. And my question is solely related to an  
22 initial startup of the pumping system to see if the  
23 water flushed through the freestalls in the way that  
24 you expected it to.

25 Did you observe anything like that before

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1 you moved your herd in?

2 A I did not observe it very well. It may  
3 have happened, but I did not observe it.

4 Q Were you present when any exercise like  
5 that was undertaken?

6 A It is a three-ring circus when you are  
7 getting cows in. And that is one of the last things  
8 you look at. But it is a very necessary thing to  
9 work if your dairy is to continue.

10 Q Did the State of Idaho require that that  
11 flush system be run before you could put the herd in  
12 there?

13 A I do not know.

14 Q Did you require that the flush system be  
15 run before you put the herd in there? Even though  
16 there wasn't manure there yet.

17 A That is something the contractor can  
18 probably answer better than I can. Because it was  
19 his project.

20 Q And I'll get a chance to ask him that  
21 question. But I want to ask you as the owner  
22 whether you --

23 A I did not observe it, no.

24 Q And you didn't demand that it be done  
25 before you moved your own herd in there?



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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 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 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

Page 188

1 or anyone with Standley & Company that Chuck DeGroot  
 2 was going to use sand as a bedding in his freestalls  
 3 before you did it?  
 4 A No.  
 5 Q Going to the third paragraph on Exhibit 5.  
 6 This talks about the level of the lagoon and the  
 7 flush water volume.  
 8 Do you see that?  
 9 A Yes.  
 10 Q Can you just tell me what he is talking  
 11 about when he says, "You also refuse to bring the  
 12 level of your lagoon to the height it was designed  
 13 for proper flush water volume?"  
 14 A The reason I could not bring my lagoon  
 15 level up is because that will fluctuate through the  
 16 year. Because in the spring you pump it down. And  
 17 in the fall you pump it down. So if you are going  
 18 to maintain a high level, and you have constant  
 19 inflow of water, you are going to run out. So I had  
 20 to maintain a certain level in order to maintain the  
 21 amount of water I accumulated in my lagoon.  
 22 Q Why was the level of the lagoon important?  
 23 A The level?  
 24 Q Let me rephrase that. In July of 2000  
 25 what was your understanding with regard to how the

# Exhibit C

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. )	Case No. CV 2001-777
KURT STANDLEY, STANDLEY )	DEPOSITION OF:
TRENCHING, INC., d/b/a )	ERNEST DeGROOT
STANDLEY & CO., and J. HOULE )	November 12, 2003
& FILS, INC., a Canadian )	
corporation, )	
Defendant. )	
<hr/>	
STANDLEY TRENCHING, INC., )	
d/b/a STANDLEY & CO., )	
Counterclaimant, )	
vs. )	
CHARLES DeGROOT, and DeGROOT )	
FARMS, LLC, )	
Counterdefendants. )	
<hr/>	

REPORTED BY:

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

1 A. Yes.  
 2 Q. So was there a time period that you worked on  
 3 the Sunnyside, Washington, dairy before the Idaho dairy  
 4 got started after you graduated?  
 5 A. Yeah.  
 6 Q. And that would have been from May of 1999  
 7 until when?  
 8 A. April of 2000.  
 9 Q. Do you know when the construction began on the  
 10 Idaho dairy?  
 11 A. I'm not exactly sure.  
 12 Q. Do you have any idea, like, even a month?  
 13 A. I believe it was in the summer of '99 they  
 14 started moving dirt.  
 15 Q. Had you made any visits to the Idaho land  
 16 prior to the move?  
 17 A. Yes.  
 18 Q. Give me an idea of how many times.  
 19 A. Probably three or four times.  
 20 Q. When would those have been?  
 21 A. Various times.  
 22 Q. After you graduated from college, though;  
 23 between May of '99 and April of 2000?  
 24 A. Yeah.  
 25 Q. What was the purpose of your visits down to

1 the Idaho land?  
 2 A. Check on progress, seeing how things were  
 3 going, just going with my dad because he was going down  
 4 there.  
 5 Q. Did you have any responsibilities between May  
 6 of 1999 and April of 2000 that related to the Idaho  
 7 dairy?  
 8 A. No.  
 9 Q. What was the planned capacity for the Idaho  
 10 dairy?  
 11 A. 2500 cows, milking and dry.  
 12 Q. Did you have any input on establishing that  
 13 capacity?  
 14 A. It wasn't my decision.  
 15 Q. Whose decision was that?  
 16 A. My dad's and the bank.  
 17 Q. What was the plan for the setup of the Idaho  
 18 dairy?  
 19 MS. FISCHER: Object as to vague.  
 20 If you understand what she's getting at, you  
 21 can answer the question.  
 22 Q. BY MS. DOUGHERTY: Do you want more  
 23 clarification?  
 24 A. Please.  
 25 Q. Compared to the Washington dairy and the way

1 that that physical setup is, whether it's free style or  
 2 open lots, what was the plan for the Idaho dairy?  
 3 A. Free stall.  
 4 Q. How was that different from the Washington  
 5 dairy?  
 6 A. Basically to provide covering for the cows  
 7 underneath -- basically, you give the cows a chance for  
 8 shelter year-round.  
 9 Q. So the Washington was all open?  
 10 A. It was all open lot.  
 11 Q. Did you have some input in deciding that the  
 12 Idaho dairy should be free style instead of open?  
 13 A. I was asked my opinion, but it wasn't my  
 14 decision.  
 15 Q. Okay. Again, would you have been asked by  
 16 your father?  
 17 A. Yes.  
 18 Q. Did you think that going to the free style was  
 19 a better approach for the Idaho dairy?  
 20 A. Yes.  
 21 Q. Why?  
 22 A. Cow comfort.  
 23 Q. Were you involved in talking to any of the  
 24 potential contractors or vendors related to the  
 25 construction of the Idaho dairy?

1 A. Not really.  
 2 Q. You didn't sit in on any meetings with your  
 3 dad when he was talking to people about constructing the  
 4 dairy down here?  
 5 A. Couple times.  
 6 Q. Do you recall who those vendors or contractors  
 7 might have been?  
 8 A. It was different general contractors as far  
 9 as -- it was more concerning bids.  
 10 Q. How did you get involved in that?  
 11 A. Because I was down here with my dad. He was  
 12 my ride.  
 13 Q. So when you sat in on those meetings with your  
 14 dad with general contractors, did you voice an opinion  
 15 or did you just listen in those meetings?  
 16 A. I just tried to listen.  
 17 Q. Did you and your dad discuss the meetings,  
 18 though, afterwards?  
 19 A. Yes.  
 20 Q. Did you have an inclination toward one or  
 21 another general contractor?  
 22 A. Yes.  
 23 Q. Who would be your pick?  
 24 A. Beltman ended up doing it because he built our  
 25 place in Washington.



# Exhibit D

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

**COPY**

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

\_\_\_\_\_  
(Caption Continued)

CONTINUED DEPOSITION OF CHARLES DeGROOT

January 27, 2004

REPORTED BY:

DIANA L. DURLAND, CSR No. 637

Notary Public

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■ SPOKANE, WA  
503-455-4515

1 seen a copy of that contract with Beltman?  
 2 A. I have looked at the contract, yes.  
 3 Q. And do you have a copy of that contract?  
 4 A. Somewhere.  
 5 MR. KELLY: Off the record.  
 6 (Discussion held off the record.)  
 7 Q. (BY MR. KELLY) Mr. DeGroot, off the record  
 8 we had a discussion with regard to what constitutes  
 9 this contract with Beltman Construction. And it's  
 10 your understanding that your contract with  
 11 Mr. Beltman is essentially the bid that Beltman  
 12 Construction provided to you?  
 13 A. Yes.  
 14 Q. And is it also still your testimony at this  
 15 point in time that you had no contract with Standley?  
 16 MS. FISCHER: Object to the form of the  
 17 question. That calls for him to answer a legal  
 18 question.  
 19 Q. (BY MR. KELLY) Are you aware of any written  
 20 contract you had with Standley Trenching in regard to  
 21 the construction of the dairy in Melba?  
 22 A. I'm not.  
 23 Q. Are you aware of any written contract that  
 24 Beltman Construction had with Standley with regard to  
 25 the construction of your dairy?

1 A. I don't know.  
 2 Q. Have you ever had any discussions with  
 3 either Stan or Tom Beltman as to whether or not they  
 4 had a contract with Standley?  
 5 A. I do not know that.  
 6 Q. You don't know if you had any discussions  
 7 or --  
 8 A. Would you rephrase that, please?  
 9 Q. Have you had any discussions with either Tom  
 10 or Stan Beltman in regard to whether Beltman  
 11 Construction had a written contract with Standley?  
 12 A. I do not recall at this time.  
 13 Q. Is it your understanding that in regard to  
 14 the work Standley did at your dairy in Melba, that  
 15 Standley was a subcontractor to Beltman Construction?  
 16 A. Yes.  
 17 Q. Are you aware of any specifications Beltman  
 18 Construction provided to Standley in regard to the  
 19 work that they were to perform at your dairy?  
 20 A. I am not aware of it.  
 21 Q. What is your understanding of the scope of  
 22 Beltman Construction's job in regard to the building  
 23 of your dairy?  
 24 A. He was the contractor.  
 25 Q. So is it your understanding that he was

1 responsible for the overall construction of the  
 2 dairy?  
 3 A. He was responsible for the construction of  
 4 the dairy, but then he subbed different areas out.  
 5 Q. Are you aware specifically of what jobs or  
 6 duties he subbed out in regard to the construction of  
 7 the dairy?  
 8 A. There's a number of areas: One was the  
 9 building of the milk barn, which he subbed out. Also  
 10 the dairy equipment which was in the milk barn. Also  
 11 the freestalls. And they did the pole work, the  
 12 building of the barns and also the manure handling.  
 13 Also, of course, before the dairy could be started,  
 14 it had to be graded.  
 15 Q. Anything else you can think of offhand?  
 16 A. Electrical.  
 17 Q. In regard to the milk barn, who did Beltman  
 18 sub that out to?  
 19 A. Bruce Cooper or Cooper Construction.  
 20 Q. Where are they out of?  
 21 A. Meridian.  
 22 Q. How about the dairy equipment?  
 23 A. That was Dairy Services.  
 24 Q. They're in Canyon County; right?  
 25 A. They're in Caldwell.

1 Q. How about the freestalls and the pole work?  
 2 A. That was done by Beltman Welding.  
 3 Q. It's your understanding that Beltman Welding  
 4 is a separate entity from Beltman Construction?  
 5 A. Can you rephrase that? I think you're  
 6 confusing issues.  
 7 Q. You indicated that Beltman Welding did the  
 8 freestall and pole work; correct?  
 9 A. Yes.  
 10 Q. It's my understanding that Beltman  
 11 Construction was the general contractor on the job;  
 12 right?  
 13 A. No, Beltman Welding.  
 14 Q. Is there an entity called Beltman  
 15 Construction?  
 16 A. At that time, no.  
 17 Q. So that's one aspect of the job that the  
 18 general contractor handled itself, the freestall  
 19 work?  
 20 A. Yes.  
 21 Q. And do you know specifically who with  
 22 Beltman Welding either supervised or handled the  
 23 majority of the freestall work?  
 24 A. It was Tom Beltman.  
 25 Q. Obviously, the manure handling sub work went

1 A. Yes.

2 Q. In conjunction with the size of the piping,  
3 were they also responsible for calculating the amount  
4 of water to be used in the flush?

5 A. Yes.

6 Q. Did anyone from Standley or Beltman come to  
7 you and ask you specifically what size herd you were  
8 going to be using in order for them to provide the  
9 calculations and sizing of the piping, et cetera,  
10 that they were going to be utilizing for the  
11 manure-handling system?

12 MS. FISCHER: I'll object to the form. If  
13 you understand the question, you can answer it.

14 WITNESS: Repeat it.

15 Q. (BY MR. KELLY) Did anyone, whether from  
16 Standley or Beltman, come to you requesting you  
17 advise them of the size of the herd for the purposes  
18 of Standley calculating out the materials and the  
19 size of the piping, et cetera, that they needed for  
20 the handling system?

21 A. No.

22 Q. Did anyone from Standley or Beltman come to  
23 you to ask you specifically what type of bedding you  
24 were going to be using in the dairy for the purposes  
25 of setting up the manure-handling system?

1 frame, do you have an idea how many trips you  
2 actually made to the dairy?

3 A. You mean from Washington?

4 Q. Yeah. I'm assuming in April you were still  
5 in Washington; is that correct?

6 A. It was at least twice a month.

7 Q. And just to backtrack, the construction of  
8 the dairy started sometime in the summer of '99;  
9 correct?

10 A. Correct.

11 Q. Between the summer of '99 and April 2000  
12 when your dairy started up, how often, if at all,  
13 would you travel to Idaho to check on the progress of  
14 the construction?

15 A. At least once or twice a month. Ask my  
16 wife.

17 Q. What do you want me to ask her?

18 A. How often I was gone.

19 Q. During that summer of '99 to April time  
20 frame, other than your trips here to Idaho to check  
21 on the construction of the project, who would have  
22 been here overseeing the construction project?

23 A. Tom Beltman.

24 Q. When did your son Ernest arrive to either  
25 oversee or start working on the dairy?

1 A. Could you repeat that, please?

2 Q. Did anyone from either Standley or Beltman  
3 come to you to specifically request what type of  
4 bedding you were utilizing, or planned to utilize in  
5 the dairy in order that they could calculate what  
6 they needed to provide for the manure-handling  
7 system?

8 MS. FISCHER: Object as to the form. You  
9 can go ahead and answer it.

10 WITNESS: Not that I recall. Just to add to  
11 that, it's a process.

12 Q. (BY MR. KELLY) Okay. So at any point  
13 during that process, did anyone from either Beltman  
14 or Standley come to you and say, "We need to know  
15 what type of bedding you're utilizing in this dairy  
16 for the purposes of us setting up the manure-handling  
17 system"?

18 A. Not that I recall.

19 Q. At the time in that April 20th, 2000, time  
20 frame, you were not in Idaho full-time as yet; were  
21 you?

22 A. No.

23 Q. When did you actually move to Idaho?

24 A. September of 2000.

25 Q. So between that April and September time

1 A. Shortly -- right near April 20.

2 Q. So, again, just from the time the  
3 construction started until Ernest arrived around  
4 April 20th, other than your once or twice visit a  
5 month to the dairy, Tom Beltman was overseeing the  
6 construction project?

7 A. Yes.

8 Q. Did Mr. Beltman communicate with you, either  
9 telephonically or in writing, as to the progress of  
10 the job?

11 A. He didn't have to, because I came often  
12 enough.

13 Q. Between the summer of '99 and the April 20  
14 start update, did you ever see anything that  
15 concerned you in regard to the installation or  
16 construction of the manure-handling system that  
17 caused you any concern?

18 A. Not then, no.

19 Q. Between July or summer of '99 and April  
20 20th, 2000, did Mr. Beltman ever express to you his  
21 concerns about how the manure-handling system was  
22 being constructed?

23 A. He would have to answer that.

24 Q. He didn't express anything to you?

25 A. He did not.

# **Exhibit E**

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, )

vs. ) Case No. CV 01-7777

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

corporation, )

Defendant. )

\_\_\_\_\_) )  
CHARLES DeGROOT, and DeGROOT )

FARMS, LLC, )

Plaintiffs, )

vs. )

BELTMAN CONSTRUCTION, INC., d/b/a )

BELTMAN WELDING AND CONSTRUCTION, )

a Washington corporation, )

Defendant/Third Party Plaintiff, ) DEPOSITION OF THOMAS

vs. ) BELTMAN taken on

STANDLEY TRENCHING, INC., d/b/a ) December 4, 2006

STANDLEY & CO., an Idaho )

corporation, and J. HOULE & FILS, ) REPORTED BY:

INC., ) COLLEEN P. KLINE, CSR

Third Party Defendants. ) No. 345

\_\_\_\_\_) ) Notary Public

1 Mr. DeGroot, Charles DeGroot himself, in regard  
2 to the lawsuit against Beltman Construction?  
3 A. Not for a long time.  
4 Q. When did you discuss this?  
5 A. Years ago.  
6 Q. Were you actually discussing the  
7 DeGroot lawsuit against Beltman, or the original  
8 lawsuit against Standley and Houle?  
9 A. DeGroot and Standley.  
10 Q. So you haven't had any discussions with  
11 Charles DeGroot in regards to the lawsuit against  
12 Beltman and DeGroot?  
13 A. No.  
14 Q. Have you had any discussions with  
15 Ernest DeGroot about the lawsuit against Beltman?  
16 A. No.  
17 Q. Did you discuss the lawsuit with anyone  
18 else; the lawsuit by DeGroot against Beltman?  
19 A. Not that I'm aware of.  
20 MR. KELLY: Let's mark this.  
21 (Exhibit 18 marked.)  
22 Q. (BY MR. KELLY) Mr. Beltman, what's  
23 been put in front of you as Deposition Exhibit  
24 18 --  
25 MR. KELLY: And, Julie, just so you are

1 aware, we're continuing the depo exhibit numbers  
2 from Charles DeGroot.  
3 MS. FISCHER: Okay. I figured you  
4 weren't starting at 1.  
5 Q. (BY MR. KELLY) Mr. Beltman, what has  
6 been put in front of you is a document entitled:  
7 "First Amended Third Party Complaint and Demand  
8 for Jury Trial." Do you see that in the middle  
9 of the page?  
10 A. Mm-hmm.  
11 Q. "Yes"? Again, you have to say "yes" or  
12 "no."  
13 A. Yes, I see it.  
14 Q. Have you ever seen this document  
15 before?  
16 A. I don't think so.  
17 Q. Do you know who David Myers is?  
18 A. I've heard of him. I don't know that I  
19 know him.  
20 Q. Do you know, have you ever spoken to  
21 Mr. Myers?  
22 A. Not that I recall.  
23 Q. I'll represent to you, Mr. Beltman,  
24 that this is the document in which Beltman  
25 Construction turned around and sued Standley

1 Construction and Houle, after DeGroot sued  
2 Beltman. Did you assist in any way, or were you  
3 consulted in any way in regard to the drafting of  
4 this document?  
5 A. This one?  
6 Q. Yes.  
7 A. No.  
8 Q. Do you have any knowledge as to who may  
9 have put this document together?  
10 A. No.  
11 Q. I just want to go through a couple of  
12 other documents with you. You can put that  
13 aside.  
14 Mr. Beltman, I'm showing you two  
15 documents that have been previously marked as  
16 Deposition Exhibits 15 and 16. Exhibit 15 is a  
17 document entitled, "Settlement Agreement and  
18 Release." Exhibit 16 is, "Assignment of Cause of  
19 Action." Do you see those two documents?  
20 A. I see the Settlement for Agreement  
21 Release.  
22 Q. And here is the other one underneath  
23 there, Exhibit 16, Assignment of Cause of Action.  
24 Do you know whether you've ever seen either one  
25 of those documents before?

1 A. Not that I recall.  
2 Q. Do you have a recollection of being  
3 involved at all in regard to working at an  
4 arrangement or agreement with Charles DeGroot and  
5 DeGroot Dairy on behalf of Beltman Construction  
6 in regard to assigning the claims of Beltman  
7 against Standley and Houle?  
8 MS. BUXTON: I'll object to the form of  
9 the question. You can go ahead and answer.  
10 THE WITNESS: Not that I recall.  
11 Q. (BY MR. KELLY) Do you know if you've  
12 had any discussions with anyone, including Stan  
13 Beltman, in regard to putting those documents  
14 together?  
15 A. Not that I can recall.  
16 Q. Okay. You can put those aside.  
17 A. (Witness complying.)  
18 Q. And one more document previously marked  
19 as Exhibit 14. In the middle of the page, it's  
20 entitled, "Stipulated Judgment against Beltman  
21 Construction." Do you see that?  
22 A. Yes, I do.  
23 Q. Do you recall if you've ever seen this  
24 document before?  
25 A. I don't think so.

# 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/Counterdefendants, )

vs. ) Case No. CV 01-7777

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

corporation, )

Defendant. )

---

CHARLES DeGROOT, and DeGROOT )

FARMS, LLC, )

Plaintiffs, )

vs. )

BELTMAN CONSTRUCTION, INC., d/b/a )

BELTMAN WELDING AND CONSTRUCTION, )

a Washington corporation, )

Defendant/Third Party Plaintiff, ) DEPOSITION OF STANLEY

vs. ) BELTMAN taken on

STANDLEY TRENCHING, INC., d/b/a ) December 4, 2006

STANDLEY & CO., an Idaho )

corporation, and J. HOULE & FILS, ) REPORTED BY:

INC., ) COLLEEN P. KLINE, CSR

Third Party Defendants. ) No. 345

---

) Notary Public

1 on, what Mr. Standley had provided?  
 2 A. Yes.  
 3 Q. Now, if you look just at Mr. Standley's  
 4 bid, sir, essentially, it looks like the first  
 5 page of Mr. Standley's bid is this piping  
 6 material; correct, for the drains, flush lines,  
 7 and water lines?  
 8 A. Yes, that is.  
 9 Q. Okay. And the second page of his bid,  
 10 again, Exhibit 13, essentially, just discusses  
 11 the construction, the burying the water lines,  
 12 drainpipes, air lines, electrical conduit;  
 13 correct?  
 14 A. Correct.  
 15 Q. Okay. And then the third page  
 16 discusses the manure equipment that will be  
 17 provided on site?  
 18 A. Correct.  
 19 Q. And then it continues over to the  
 20 fourth page; is that correct?  
 21 A. Yep.  
 22 Q. Now, in this document, Mr. Beltman, is  
 23 there any reference whatsoever to -- there's no  
 24 reference to a design of a manure handling  
 25 system; is there?

1 A. No, there is not.  
 2 Q. Is Mr. Standley an engineer, as far as  
 3 you know?  
 4 A. As far as I know, no.  
 5 Q. Did you ever discuss with Mr. Standley,  
 6 Mr. DeGroot or anyone for that matter, retaining  
 7 an engineer to actually do a design on any part  
 8 of the dairy, including the manure system?  
 9 A. I was instructed to rely on his  
 10 expertise on it, Mr. Standley's.  
 11 Q. By who?  
 12 A. By Mr. DeGroot.  
 13 Q. And why was that; do you have any idea  
 14 why?  
 15 A. I think Mr. DeGroot had a high level of  
 16 confidence in Mr. Standley's opinion.  
 17 Q. Okay. Did you suggest that you retain  
 18 an engineer for the job?  
 19 A. No, I did not.  
 20 Q. And just to be clear, Mr. Beltman, did  
 21 you consider yourself, after this bid of June  
 22 4th, 1999 was accepted by Mr. DeGroot, to be the  
 23 general contractor on the job, other than the  
 24 barn parlor?  
 25 A. Yeah, on my portion of the job.

1 Q. And would you consider Mr. Standley and  
 2 his company as a subcontractor to Beltman  
 3 Construction?  
 4 A. Yes.  
 5 Q. And would you consider your brother,  
 6 Tom Beltman, to be the on-site foreperson at that  
 7 facility?  
 8 A. Yes.  
 9 Q. And do you believe that your brother's  
 10 duties were to oversee the work of both, Beltman  
 11 Construction and the subcontractors at the site?  
 12 A. Yes, but the subcontractor -- yes, the  
 13 subcontractor's expertise does not fall under  
 14 ours. You rely on their expertise. It's like  
 15 building a house. The guy that puts the heating  
 16 system in, you rely on his expertise.  
 17 Q. If there were a problem with  
 18 Mr. Standley's work, would you had expected your  
 19 brother to advise you of such problems?  
 20 A. Yes.  
 21 Q. At any point in time during the  
 22 construction of the DeGroot Dairy, did your  
 23 brother ever come to you with any problems or  
 24 concerns about Standley's work at the DeGroot  
 25 Dairy?

1 A. We were frustrated.  
 2 Q. How so?  
 3 A. It started with the fresh water system.  
 4 They just weren't showing up to put in the pipes,  
 5 and it was holding us up on getting our concrete  
 6 alleys poured. So I asked him to take it out of  
 7 his bid. It's not on this bid, but another bid.  
 8 Q. You asked Mr. Standley to do so?  
 9 A. Right, because they weren't getting it  
 10 done.  
 11 Q. All right. And did he take it out?  
 12 A. Yes, he did.  
 13 Q. Okay. And did you have somebody else  
 14 come in and do that work?  
 15 A. Yes.  
 16 Q. Who was that?  
 17 A. Dean Morrison.  
 18 Q. And did you handle that, or did  
 19 somebody else retain Mr. Morrison?  
 20 A. I handled that portion.  
 21 Q. And did Mr. DeGroot know about the  
 22 change to Mr. Morrison?  
 23 A. On the fresh water?  
 24 Q. On the fresh water.  
 25 A. Yes.

1 Q. Do you know if anyone on your behalf  
2 ever filed an answer to this document?

3 A. Mr. Myers did.

4 Q. Did Mr. Myers just file the third-party  
5 complaint, or did he actually file an answer; do  
6 you know about that?

7 A. I really don't know.

8 Q. Okay. Actually, let me see that copy.  
9 Let me trade you. It's the same thing.

10 Mr. Beltman, could you look at page 4  
11 of the document?

12 A. Okay.

13 Q. Under Count I, Breach Of Contract,  
14 paragraph 21, it says, "Defendant," which in this  
15 case, would be Beltman Construction, "breached  
16 its contract with plaintiffs," which would be  
17 DeGroot, "by failing to construct the dairy in a  
18 workmanlike manner resulting in numerous effects  
19 of the operation of the dairy, particularly with  
20 respect to the manure handling system installed  
21 by Standley at the direction and request of  
22 defendant." Did I read that properly?

23 A. Yes, you did.

24 Q. Do you believe that allegation to be  
25 true?

1 demand of Standley that he return DeGroot's money  
2 for the insufficient or defective manure handling  
3 equipment?

4 A. No.

5 Q. Did Mr. DeGroot ever ask you to do so?  
6 Did he ever ask you to contact Standley to demand  
7 the return of the money?

8 A. Personally, no.

9 Q. If we look on the same page, paragraph  
10 42, it says, "Plaintiffs requested that defendant  
11 engineer, design, select equipment for, and  
12 construct a dairy facility for a 2,000-plus head  
13 dairy operation." Is that allegation correct,  
14 Mr. Beltman?

15 A. No, it's not.

16 Q. Do you deny that allegation? Do you  
17 deny that allegation is true? Excuse me.

18 A. The select equipment part.

19 Q. But they did request that you engineer  
20 and design?

21 A. We was given a plan, a site plan.

22 Q. So you believe the allegations are true  
23 that the plaintiffs -- DeGroot requested that  
24 Beltman design and engineer the dairy facility?

25 MS. BUXTON: I'm going to object to the

1 A. No.

2 Q. Okay. Go to page 6. And just to let  
3 you know, I think we're missing a page in here.  
4 Page 5 is missing, at least on my copy.

5 MR. McCURDY: It is on mine, too.

6 MR. KELLY: Sorry about that. I'll get  
7 a corrected copy.

8 Q. (BY MR. KELLY) Let's just go to page  
9 6. Under Count Three, Recission. Paragraph 36  
10 states, "Plaintiff notified Standley on June  
11 18th, 2001, that plaintiffs were revoking  
12 acceptance of said manure handling equipment and  
13 demanded a return of the plaintiffs' purchase  
14 money pursuant to Idaho Code Section 28-2608."

15 And then on the next page, it  
16 continues. Paragraph 37, "Defendant refused to  
17 return plaintiffs' purchase money for the  
18 insufficient and/or defective manure handling  
19 equipment."

20 First of all, Mr. Beltman, do you  
21 recall Mr. DeGroot ever approaching you and  
22 requesting that you return the money for the  
23 purchase of the manure handling equipment?

24 A. No.

25 Q. Did you, in turn, ever contact and

1 question, because I believe it mischaracterizes  
2 prior testimony, but you can answer.

3 THE WITNESS: Design and engineer the  
4 free stall buildings, yes. That was left up to  
5 the newer equipment dealer to handle that end of  
6 the dairy.

7 Q. (BY MR. KELLY) Okay. But you weren't  
8 expected to engineer or design the equipment;  
9 were you?

10 A. No, I was not.

11 Q. In paragraph 43 on the next page it  
12 says, "Defendant represented to plaintiffs that  
13 it had the expertise and knowledge to design and  
14 construct such a facility and represented that it  
15 would provide the equipment for the same." Is  
16 that a correct allegation as to that one?

17 MS. BUXTON: I'll object to the form of  
18 the question to the extent it's asking for a  
19 legal conclusion. But the witness can answer as  
20 to his understanding.

21 THE WITNESS: I would say a dairy is a  
22 huge project. You've got to rely on expertise on  
23 a lot of different entities on it.

24 Q. (BY MR. KELLY) So do you believe  
25 Mr. DeGroot relied on you and your expertise and

1 knowledge in designing and constructing the dairy  
2 facility?

3 A. No, he did not. Not on the manure  
4 handling.

5 Q. If you go to page 9, paragraph 56, it  
6 states, "Defendant acted carelessly, recklessly,  
7 and negligently in failing to construct and  
8 maintain the dairy -- the plaintiffs' dairy  
9 facility in a reasonable manner resulting in  
10 numerous defects in or around the dairy  
11 facility."

12 A. I just --

13 Q. Is that allegation true?

14 A. I disagree with that.

15 Q. So you're denying that allegation?

16 A. I'm denying it.

17 Q. Mr. Beltman, I think most of the  
18 allegations I just cited, you either denied or  
19 had a qualified denial on. Now, these were the  
20 allegations made by DeGroot against Beltman?

21 A. Correct.

22 Q. And based on your denials, you still  
23 went ahead and signed off on the stipulated  
24 judgment for almost a million dollars?

25 A. Yeah, I guess so.

1 Q. And why was that?

2 MS. BUXTON: Again, I'm going to object  
3 to this line of questioning to the extent that  
4 you are asking for the witness to give a legal  
5 conclusion. You can answer.

6 THE WITNESS: By advice of my counsel  
7 at the time.

8 Q. (BY MR. KELLY) Okay. Any other  
9 reason, other than what your counsel told you?

10 A. Nope, that's it.

11 Q. And again, as you sit here today, would  
12 you have a change of heart if you had that  
13 decision to make today?

14 MS. BUXTON: Again, I'll object to the  
15 question to the extent it's asking for a legal  
16 conclusion, or that it's asking for  
17 attorney/client privileged information. You can  
18 answer.

19 THE WITNESS: It depends on what the  
20 choice -- alternative was.

21 Q. (BY MR. KELLY) If your choice was to  
22 be able to just walk away from this thing, would  
23 you have signed off on this stipulated judgment?

24 A. In a heartbeat.

25 Q. You would not have signed off on it --

1 or you would have walked away in a heartbeat?

2 A. I would have walked away in a  
3 heartbeat.

4 Q. Okay. Pull out Exhibit 18, again. It  
5 should be towards the bottom there. Yeah, there  
6 it is. Now, if you look at page 3 of this  
7 document, again, this is the third-party  
8 complaint then that you filed against Standley  
9 and Houle; correct?

10 A. Correct.

11 Q. Okay. If you look at paragraph 18,  
12 under Count I Breach Of Contract, it states,  
13 "Beltman subcontracted with Standley for the  
14 engineering, designing, and installation of  
15 manure handling equipment at DeGroot's dairy in  
16 Canyon County Idaho." Did I read that correctly?

17 A. Yes.

18 Q. And do you believe that allegation to  
19 be true?

20 A. Yes.

21 Q. And a subcontract that you're talking  
22 about in this paragraph, would that be Exhibit  
23 13, the bid that Standley submitted to Beltman  
24 Construction?

25 A. Yes.

1 Q. Okay. Any other documents that you are  
2 aware of that you rely on, as far as there being  
3 contract between --

4 A. No.

5 Q. -- Beltman and Standley?

6 A. That's it.

7 Q. And if you look at Count Two on page 4,  
8 I think we went through this already in regard to  
9 Mr. DeGroot's complaint, but it discusses that  
10 Mr. DeGroot notified Standley on June 18, 2001,  
11 that they were revoking acceptance of the manure  
12 handling equipment and demanding return of their  
13 money.

14 And in the subsequent paragraph, 31,  
15 states, "Standley has refused to return the  
16 purchase money for the insufficient/defective  
17 manure handling equipment."

18 Do you have any knowledge of DeGroot  
19 requesting Standley to return the money for the  
20 manure handling system?

21 A. No, I do not.

22 Q. And just to clarify, as you testified  
23 earlier, you've never made a demand on Standley  
24 to return money for the manure handling  
25 equipment; correct?

1 reasonable manner, resulting in numerous defects  
2 in the equipment and its operation." Do you  
3 believe those allegations to be true?

4 A. Yes, I do.

5 MS. BUXTON: Again, I'll renew my  
6 objection to extent you're asking for this  
7 witness to testify as to a legal conclusion.

8 MR. KELLY: He beat you to it.

9 MS. BUXTON: He's quicker than I am.

10 THE WITNESS: Okay. Sorry.

11 Q. (BY MR. KELLY) Mr. Beltman, in regard  
12 to this negligence allegation, and then the  
13 paragraphs I just read, to your knowledge -- I  
14 mean, you're alleging that Mr. Standley was  
15 negligent in the performance of his contract  
16 that, again, is represented by this bid that he  
17 submitted to you?

18 A. Yes.

19 Q. I'm not going to ask you to go through  
20 all of these, but I'm going to show you,  
21 Mr. Beltman, Third-Party Plaintiff Beltman  
22 Construction's Responses To Third-Party  
23 Defendant's Standley Interrogatories and Requests  
24 For Production.

25 And these are your discovery responses

1 and I don't have any specific questions in regard  
2 to anything on here as of this moment. But I was  
3 wondering if you could walk us through and tell  
4 us what each of these documents represent. So we  
5 can start on page 1. It's a handwritten  
6 notation. It says: Date, name of business on  
7 top -- credit card; do you see that?

8 A. Yes.

9 Q. What does this document represent?

10 MR. WILKINSON: I'm sorry. Did we mark  
11 this as an exhibit?

12 MR. KELLY: We can. It's going to be  
13 Exhibit 24; is that correct?

14 THE WITNESS: These were for expenses  
15 incurred -- oh, like hiring, you know, to unplug  
16 drainpipes that were plugged up. I think Boise  
17 Crane was for lifting those manure separators on  
18 the wall.

19 MS. BUXTON: But for the record, we  
20 realize that this copy is not wonderful. We  
21 will --

22 THE WITNESS: It's hard to read.

23 MS. BUXTON: -- we will provide  
24 everybody with a better copy. It was faxed to  
25 our office today, so...

1 forwarded to us by the White Peterson firm. And  
2 I just want you to take a look at those, and let  
3 me know if you've ever seen those before?

4 A. (Witness complying.) Yes, I have.

5 Q. And if you turn to the last page, is  
6 that your signature on the verification page?

7 A. Yes, it is.

8 Q. And on that verification page, your  
9 signature represents that these answers are  
10 correct and complete to your knowledge; correct?

11 A. Yes.

12 Q. Thank you. That's all I have on that.

13 MS. BUXTON: Does that have an exhibit  
14 number?

15 MR. KELLY: This, I'm not making an  
16 exhibit.

17 MR. McCURDY: Did you say you were  
18 done? I'm sorry. You said something.

19 MR. KELLY: No. Actually, give me a  
20 second here, and I'll let you know. Thank you,  
21 Counsel. Actually, no, but...

22 Q. (BY MR. KELLY) Mr. Beltman, during the  
23 course of the deposition, additional documents  
24 were provided to us by your attorney, and I was  
25 wondering if you could kind of walk us through --

1 MR. KELLY: First of all, Mr. Beltman,  
2 can I just see your -- that whole packet just for  
3 a second?

4 THE WITNESS: I'm having a hard time  
5 even reading.

6 (Exhibit 24 marked.)

7 Q. (BY MR. KELLY) I just wanted to make  
8 sure that --

9 A. My wife put this together.

10 Q. Okay. And what you're looking at is  
11 Exhibit 24, that has approximately, about 25  
12 pages or so of documents. Let me ask you, real  
13 quickly, Mr. Beltman: That first page, you  
14 started reading off what you believe some of  
15 those vendors were for, as far as -- and that's  
16 related to the DeGroot Dairy job; is that  
17 correct, as far as you know?

18 A. Yes.

19 Q. Okay. Do you know if these charges  
20 were ever then given to Mr. DeGroot to pay off,  
21 or were those charges that Beltman Construction  
22 ate; do you have any idea?

23 A. When we built the wall and put  
24 separators in, Mr. DeGroot paid us for that.

25 Q. Okay. So as far as you know, these are

1 corporation when she called Canada; is that  
2 correct?

3 A. Yes.

4 MR. McCURDY: Okay. Thanks. That's  
5 all I have.

6 MS. BUXTON: In hindsight, I actually  
7 have a couple of questions.

8 MR. McCURDY: You waived. She can go  
9 ahead.

10 MR. KELLY: Let's go off the record.

11 (Discussion held off the record.)

12 EXAMINATION

13 QUESTIONS BY MS. BUXTON:

14 Q. Mr. Beltman, could you refer to  
15 Deposition Exhibit 18, please. That's identified  
16 as the First Amended Third-Party Complaint and  
17 Demand For Jury Trial.

18 A. Okay.

19 Q. In response to questions from both  
20 Mr. Kelly and Mr. McCurdy, they asked you,  
21 specifically, why you sued their respective  
22 clients; is that correct?

23 A. Yes.

24 Q. In general, without getting into  
25 legalese reasons under each claim or each

1 Paragraph 28 states, "The design and equipment  
2 supplied and installed by Standley and  
3 manufactured by Houle was inadequate for the size  
4 DeGroot's Dairy and does not function properly."

5 Does that paragraph sum up your understanding of  
6 why you sued Standley and Houle?

7 A. Yes.

8 Q. When this First Amended Third-Party  
9 Complaint and Demand For Jury Trial document was  
10 put together, you testified that you did not  
11 draft it, and your attorney did; is that correct?

12 A. Yes.

13 Q. Did you have specific conversations  
14 with your attorney regarding the legal meaning of  
15 the words: Precision; breach of warranties; the  
16 legal word, representation; covenants of good  
17 faith and fair dealing; and the terms of the  
18 Idaho Consumer Protection Act? Let me restate  
19 that. Did your lawyer describe to you in detail  
20 what those legal terminologies meant?

21 A. No, he did not.

22 MS. BUXTON: I have no further  
23 questions.

24 MR. WILKINSON: I don't have anything.

25 FURTHER EXAMINATION

1 allegation, why did Beltman Construction sue  
2 Houle for the equipment, in your own words?

3 A. I guess, Houle and Standley Trenching  
4 represented to Chuck at a trade show promoting  
5 their equipment. When I bid this job, Chuck had  
6 come back from the trade show: This is what I  
7 want; period. So, that's what we did.

8 Now, as far as the design system, I  
9 assume Houle had input, as well as Mr. Standley,  
10 on the design of the system, and that's why they  
11 are listed in there.

12 Q. Well, why would you assume that Houle  
13 had input into the design of the system,  
14 specifically, from the DeGroot Dairy?

15 A. This was Mr. Standley's first  
16 installation, from what I understand, of the  
17 equipment.

18 Q. So your assumption is based on his  
19 being a dealer; is that correct?

20 A. Yes, as a dealer. So, I'm assuming  
21 that if a dealer is representing a company, and  
22 that's his first job, the company would have to  
23 put some input into that, on the design of the  
24 system.

25 Q. I'll refer you to page 4, paragraph 28.

1 QUESTIONS BY MR. KELLY:

2 Q. Mr. Beltman, could you keep Exhibit 18  
3 open and turn to page 8, please.

4 A. (Witness complying.)

5 Q. In regard to paragraph 61, I believe  
6 your testimony earlier was that, the goods and  
7 services that constituted unfair and deceptive  
8 acts or practices on behalf of Standley, was the  
9 mis-sizing of the piping; is that accurate? Is  
10 that correct?

11 A. Yes.

12 Q. When did you learn that the, from your  
13 perspective, that the piping was mis-sized?

14 A. When it showed up there.

15 Q. And that would have been in 1999;  
16 correct?

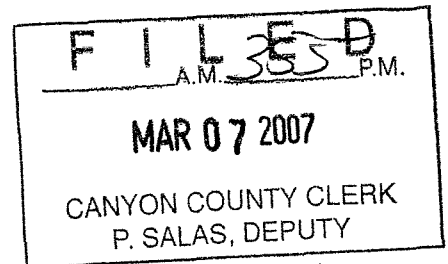
17 A. Yeah.

18 Q. Now, you just testified that you  
19 believe or knew at some point in time that the  
20 installation of the manure handling system at the  
21 DeGroot Dairy was the first one done by Standley;  
22 is that correct?

23 A. Yes.

24 Q. And when did you learn that?

25 A. In reading the documents.



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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

<p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Plaintiffs/Counterdefendants,</p> <p>-vs-</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY &amp; CO., and J. HOULE &amp; FILS, INC., a Canadian corporation;</p> <p>Defendants,</p> <p>and</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY &amp; CO.,</p> <p>Counterclaimant.</p>	<p>CASE NO. CV 2001-7777</p> <p><b>AFFIDAVIT OF JILL S. HOLINKA IN SUPPORT OF MEMORANDUM IN OPPOSITION TO THIRD PARTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</b></p>
---	---

<p>CHARLES DeGROOT, and DeGROOT DAIRY, LLC,</p> <p>Plaintiffs,</p> <p>-vs-</p> <p>BELTMAN CONSTRUCTION, INC., d/b/a BELTMAN WELDING AND CONSTRUCTION, a Washington corporation;</p> <p>Defendant/Third Party Plaintiff</p> <p>v.</p> <p>STANDLEY TRENCHING, INC. d/b/a STANDLEY &amp; CO., an Idaho corporation, and J. HOULE &amp; FILS, INC.</p> <p>Third Party Defendants.</p>	<p><b>CASE NO. CV 2005-2277</b></p>
---	-------------------------------------

STATE OF IDAHO     )  
                                       : ss.  
 County of Canyon     )

JILL S. HOLINKA, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record for Plaintiffs in the above-entitled matter and as such, have personal knowledge of the facts contained herein.
2. Attached hereto as Exhibit "A" is a true and correct copy of relevant portions of the Deposition of Charles DeGroot taken on October 22, 2002.
3. Attached hereto as Exhibit "B" is a true and correct copy of relevant portions of the Deposition of Kurt Standley taken on January 28, 2004.

AFFIDAVIT OF JILL S. HOLINKA - 2



4. Attached hereto as Exhibit "C" is a true and correct copy of relevant portions of Deposition of Charles DeGroot taken on January 27, 2004.

5. Attached hereto as Exhibit "D" is a true and correct copy of relevant portions of Deposition of Stanley Beltman taken on December 4, 2006.

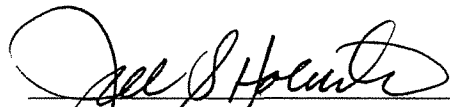
6. Attached hereto as Exhibit "E" is a true and correct copy of relevant portions of Deposition of Tom Beltman taken on December 4, 2006.

7. Attached hereto as Exhibit "F" is a true and correct copy of relevant portions of Deposition of Tom Beltman taken on October 23, 2002.

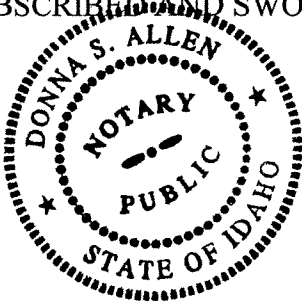
8. Attached hereto as Exhibit "G" is a true and correct copy of relevant portions of Deposition of Ernest DeGroot taken on November 12, 2003.

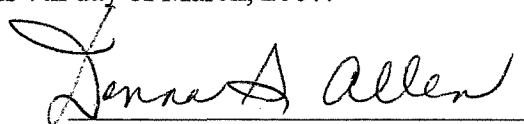
Further, your affiant sayeth naught.

DATED this 7th day of March, 2007.

  
Jill S. Holinka

SUBSCRIBED AND SWORN to before me this 7th day of March, 2007.



  
Notary Public for Idaho  
My Commission Expires: 07/19/07

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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for WHITE PETERSON

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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 )

Canandian 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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**EXHIBIT A**

## Page 85

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

## Page 87

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?

## Page 86

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

## Page 88

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 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

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

DEPOSITION OF KURT STANDLEY

January 28, 2004

Nampa, Idaho

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

**COPY**



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Page 16

1 which is Standley Trenching?

2 A. Correct.

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

6 A. Yes.

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

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

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

21 Q. Sure.

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

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

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1 A. Me.

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

3 A. No, he's not.

4 Q. How about your dad?

5 A. Nope.

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

8 A. No.

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

13 A. We started putting in some separators for  
14 some guys, Albers separators. We were contracted to  
15 do small concrete walls, you know, to mount a  
16 separator up on. We would install pumps. We weren't  
17 in the manure equipment sales part. We were just  
18 basic labor. They would hire us to do a little  
19 concrete work, a little backhoe plumbing work, and  
20 hook stuff up, that kind of thing.

21 Q. Now, at some point you became a Houle  
22 dealer; is that right?

23 A. That's correct.

24 Q. When did that happen?

25 A. It happened in '98.

Page 18

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

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

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

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

18 A. No.

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

23 A. No.

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

25 A. Un-huh.

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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,

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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

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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

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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.

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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.



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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,

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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?

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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.

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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

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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.

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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

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1 dumb questions. But when you are trying to determine  
2 what size motor to put on the flush pump, do you have  
3 to go through your head pressure friction loss  
4 calculation to figure that out?

5 A. Correct.

6 Q. And I can't remember if we got to the end of  
7 questions on that issue. Did you do a calculation for  
8 head pressure and friction loss with respect to the  
9 flush pump on the DeGroot Dairy?

10 A. I did.

11 Q. Do you have that worksheet anywhere?

12 A. I do not.

13 Q. But I guess we can determine that, even if  
14 you don't have the calculations, you at least made the  
15 determination that a 40 horse pump would deliver  
16 enough water to the top end of the free stalls to  
17 flush the allies?

18 A. Correct.

19 Q. Do you remember, and I guess I don't really  
20 care where you derive your memory from, whether it's  
21 from yesterday, or seeing the plans, or you just know  
22 it. How long are the free stalls at the DeGroot  
23 Dairy?

24 A. I don't know.

25 Q. At some point were you told?

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1 water you've got to be pumping at the back end to get  
2 the required gallons per minute at the top end?

3 A. Correct.

4 Q. Do you recall how many gallons per minute  
5 you determined at the free stalls at the DeGroot Dairy  
6 needed at the top end?

7 A. I don't not -- no, not specifically.

8 Q. Would it be in the neighborhood of 3,000  
9 gallons per minute?

10 A. It would be.

11 Q. That's typical for a thousand foot free  
12 stall?

13 A. Well, that's always the goal. I don't know  
14 that you always achieve that. More pointedly you can  
15 -- well, this varies greatly. You can flush a dairy  
16 barn with anywhere from 1,800 to above, depending on  
17 slope of the barn, width of the alley, and composting  
18 requirements or bedding requirements.

19 Q. What was the slope of the free stalls at the  
20 DeGroot Dairy?

21 A. I don't remember specifically, but one  
22 percent would probably be where I would guess they  
23 would be.

24 Q. When you are talking about 1,800 can be  
25 sufficient, does that apply with a one percent slope,

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1 A. Oh, I'm sure I did know, yeah.

2 Q. If I told you they were a thousand feet  
3 long, would that be about right?

4 A. That would be about right I would think.

5 Q. Do you know how wide each alley was?

6 A. I did at one time. I don't today.

7 Q. Okay. And let me just represent I think the  
8 widest are probably 12, and some I think are ten feet  
9 wide, and others are 12 feet wide; does that sound  
10 about right?

11 A. Fairly typical, even maybe 14 feet on the  
12 feed alley and 10 or 12 on the back alley.

13 Q. Now, is the width or length of the alley, do  
14 you have to know that to perform your head pressure  
15 friction loss calculation?

16 A. No, you need to know that more for your GPM  
17 requirements.

18 Q. And when you say "GPM," you mean gallons per  
19 minute?

20 A. Correct.

21 Q. Which that relates to how much water you  
22 need at the top end of the free stall to flush it?

23 A. To clean the lane.

24 Q. And maybe I misspoke, because your friction  
25 loss head pressure calculation tells you how much

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1 or do you need a steeper slope for less water to be  
2 effective?

3 A. It depends. Again, bedding source is  
4 probably as critical as elevation.

5 Q. Okay.

6 A. So if you are on mats, let's say, and you  
7 don't have a bedding source, you need less water. And  
8 if you can do it faster -- five consulting firms --  
9 and I don't want to probably veer off into a huge  
10 manure discussion, but there is a whole different  
11 thinking out there on: This guy thinks this way, and  
12 this way, and this way. They use a very steep barn.

13 Q. And one percent is not very steep; is it?

14 A. No, not really.

15 Q. Well, and I understand and can certainly  
16 appreciate the fact that there are divergent theories  
17 and ways of approaching these.

18 When you are approaching it when you are  
19 sizing, let's say, the flush motor at the 40 horse  
20 range, what gallon per minute goal did you have at the  
21 top end of the DeGroot Dairy free stalls?

22 A. 2,500.

23 Q. How did you arrive at 2,500?

24 A. I just picked that number.

25 Q. So you picked it based just on your

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1 friction loss, et cetera, et cetera, et cetera. And  
 2 if I understood you right, you indicated that when you  
 3 were calculating your gallons per minute, you use the  
 4 furthest allies and that's what you shoot for. So in  
 5 this case, this northern most free stall would be the  
 6 furthest free stall on the DeGroot Dairy?

7 A. Correct.

8 Q. Do you know how far that is? I mean, how  
 9 many feet of pipe are we talking from the flush pump  
 10 to this northern most alley?

11 A. I don't.

12 Q. Did you, in connection with the calculations  
 13 you've indicated that you did, did you do head  
 14 pressure friction loss calculations based on the  
 15 distance from the flush pump, and all the elbows, and  
 16 pipe sizes from the flush pump to this northern most  
 17 alley?

18 A. I did.

19 Q. Okay. And, again, if I understood you  
 20 correctly, you indicated that your target gallon per  
 21 minute was 2,500 gallons per minute?

22 A. Mm-hmm.

23 Q. And that would have been based on head  
 24 pressure friction loss from the flush pump to the  
 25 northern most alley?

Page 94

1 could change would be the horsepower on the pump. I  
 2 mean, did I hear you right?

3 A. Well, yeah, and that's kind of simplistic.

4 You can put booster pumps here and there. You can do  
 5 all kinds of things. The simple thing if it's a 40  
 6 horse, you put a 50 horse or a 60 horse.

7 Q. Okay. Is another way to go at that, can you  
 8 change the pipe size, I mean, from your initial  
 9 design?

10 A. You certainly can. I mean, it's expensive,  
 11 but you could do that.

12 Q. Okay. But I guess the bottom line is, you  
 13 put your bid together. You pick the pipe sizes for  
 14 the flush, which was, what, 12 inch?

15 A. Uh-huh.

16 Q. And based on your calculations with 12-inch  
 17 pipe and a 40-horse motor on the flush pump, you  
 18 thought you could achieve 2,500 gallons per minute at  
 19 the furthest free stall?

20 A. Correct.

21 Q. All right. We kind of got sidetracked.

22 Going back to the bid. You submit that bid to Stan  
 23 Beltman of -- I'm not going to hold you to exact math  
 24 -- but it looks like your bid is probably in the  
 25 neighborhood of 220,000 or 230,000 --

Page 93

1 A. Correct.

2 Q. If you achieved 2,500 gallons per minute at  
 3 this farthest free stall, do you have any idea how  
 4 many gallons per minute you are getting on the closest  
 5 free stall, which would be the southern most free  
 6 stall?

7 A. No.

8 Q. Is it going to be a lot more than 2,500 or  
 9 just modestly more?

10 A. Some.

11 Q. The way you phrased, when we were talking  
 12 about the 2,500 gallons per minute, that was your  
 13 goal, and you don't always achieve your goal. What is  
 14 an acceptable deviation, if you will, from the 2,500?  
 15 Are we talking 10 percent, 20 percent?

16 A. Well, I don't know that we get down to  
 17 actual percentages of deviation. Typically, if you  
 18 run your numbers out, the only thing that's going to  
 19 probably change, or that you can make change on would  
 20 be your horsepower requirements at this location.

21 So in my experience, and in what we've done  
 22 is, if it cleans the lane, we don't technically go  
 23 back and know exactly how many gallons that is. If it  
 24 cleans the lane, it's good enough.

25 Q. Well, you indicated the only thing that you

Page 95

1 A. Okay.

2 Q. -- Is that right?

3 A. Could be.

4 Q. I mean, roughly. I'm not going to hold you  
 5 to that.

6 A. Yeah.

7 Q. I'm assuming because we're sitting here  
 8 today, that Beltman decided to use you to do the flush  
 9 system and the manure processing system? I mean, he  
 10 awarded you that subcontract?

11 A. Well, yeah, the drains.

12 Q. Well, I thought before we were talking, and  
 13 we were referring to it as the flush system.

14 A. And that includes the drains.

15 Q. Oh, yeah, the pipe was kind of in the middle  
 16 there?

17 A. It's kind of.

18 Q. Got you. The flood system, drain, and  
 19 manure processing, you were awarded the bid for those  
 20 three things?

21 A. Well, I wouldn't say processing, as much as  
 22 I would say just the manure equipment. I didn't  
 23 design anything for this. I just listed manure  
 24 equipment.

25 Q. Okay.

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1 would have pitched a bitch. I was busy. There wasn't  
2 a hell of a lot of it left. You kind of get this  
3 feel, they want to do their own thing, and so you let  
4 them do their own thing. I'm just a sub. He's the  
5 man.

6 Q. Did your company dig the trench from the  
7 junction box to the reception pit?

8 A. No.

9 Q. You didn't do any of that excavating?

10 A. I didn't do anything around the reception  
11 pit. I didn't -- I really didn't supply any drain  
12 past this point.

13 Q. Did you supply the pipe that was ultimately  
14 installed?

15 A. I can't remember. It's a good question. I  
16 actually think that that pipe was on the job, and they  
17 just used the pipe, because it was theirs.

18 Q. Did you get paid for the pipe?

19 A. I'm sure I did.

20 Q. Do you know what size pipe you  
21 installed -- well, let's go at it two ways: If we  
22 look at your bid to start with, it looks like you bid  
23 18 inch --

24 A. Uh-huh.

25 Q. -- for the drain?

Page 114

1 Q. What's the maximum capacity per minutes of a  
2 15-inch pipe?

3 A. What's the pressure?

4 Q. Gravity.

5 A. I'd have to do the calcs.

6 Q. Can you do that?

7 A. Probably. Not right now. I don't have my  
8 stuff with me. But I can get that information for  
9 you.

10 Q. Okay. So when your crews left the DeGroot  
11 project, did they all shift straight to the Tunniesen  
12 project?

13 A. Uh-huh.

14 Q. And you had plenty of work to keep them all  
15 busy at Tunniesen's dairy?

16 A. Yeah. Yeah, I did.

17 Q. Did you ever have any conversations with  
18 Stan Beltman about your perception that Tom was,  
19 essentially, forcing you off the job?

20 A. Nope.

21 Q. And if I understood you correctly, you  
22 didn't address that issue with Tom?

23 A. No.

24 Q. Did you ever talk to Chuck DeGroot about  
25 that?

Page 113

1 A. I did.

2 Q. What actually got installed from this north  
3 free stall to the junction box?

4 A. I would think 18.

5 Q. Would it surprise you if it was 15?

6 A. Probably not.

7 Q. Do you have any idea why the change from 18  
8 to 15?

9 A. Because you are told -- I mean, you are told  
10 to do it, I guess.

11 Q. Who told you to do 15-inch pipe on the  
12 drain?

13 A. I would assume Beltman. I don't remember a  
14 specific conversation with me that says, "Order 15  
15 inch." But if 15 got buried, I was told to order 15.

16 Q. But if I understood what you said before, I  
17 mean, you did your calculation -- well, actually, you  
18 didn't do a calculation with respect to the drain,  
19 because you said, "Based on your experience and  
20 industry standard, you just picked 18"; right?

21 A. Yeah.

22 Q. So from your perspective, was there any  
23 problem switching to 15?

24 A. There is 15 inch out there. I mean, it's  
25 not like it's a huge arguable thing to me.

Page 115

1 A. No.

2 Q. By the time you left after this section of  
3 drain piping here from the north free stall to the  
4 junction box is installed, had you already set the  
5 manure equipment?

6 A. No.

7 Q. How long a gap in time between the time you  
8 left and the time you came back to place the manure  
9 equipment?

10 A. Probably months, I would think.

11 Q. Did you ever see the system function?

12 A. Chuck's?

13 Q. Yes.

14 A. Yes, I did.

15 Q. With cows on it?

16 A. I did.

17 Q. Did you ever do any kind of water flow  
18 testing or anything to see if you were achieving your  
19 goal of gallons per minute at the top end of the free  
20 stalls?

21 A. We did.

22 Q. Did you conduct some measurements?

23 A. I did.

24 Q. Okay.

25 A. I wouldn't say measurements. There is a

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1 kind of likes to do it three times a day. You have to  
2 catch it, process it, and sequentially, you just move  
3 across the dairy. That's how the numbers fare out on.

4 Q. Well, maybe we need to wait to talk about  
5 that in detail until you get that other manual,  
6 because you are saying 50,000 gallons a day if there  
7 is a thousand cows?

8 A. And that's one lane.

9 Q. Right.

10 A. And I could be wrong.

11 Q. And that's what -- I don't want to pin you  
12 down, and I know Mike's not going to want me to pin  
13 you down on those numbers because --

14 A. And then the numbers -- that particular  
15 number isn't my point. It's just how do you formulate  
16 all the numbers that go into trying to develop a  
17 manure system or a flush system for a dairy? We  
18 didn't have all this information when we did Chuck's.  
19 We had just work history and we're starting into the  
20 development of a lot of this.

21 Q. When you say "we"?

22 A. Houle, I should say.

23 Q. But you've been in the dairy business for  
24 quite some time; hadn't you?

25 A. Me?

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1 Q. Yeah.

2 MR. KELLY: Object to the form.

3 Q. (BY MR. DINIUS) I mean, had you been  
4 working on the dairy side of things for quite some  
5 time by the time you showed up on --

6 A. Probably.

7 MR. KELLY: The same objection.

8 Q. (BY MR. DINIUS) And let me finish my  
9 question, and then let Mike object, and then you can  
10 answer.

11 A. Okay.

12 Q. You had been working in the dairy industry  
13 for quite some time by the time you showed up at  
14 DeGroot?

15 MR. KELLY: I will object to the form. Go ahead.

16 Q. (BY MR. DINIUS) Now you can answer.

17 A. Yeah, I had done a couple of projects.

18 Q. Had you ever gone through the process that  
19 you did at the DeGroot Dairy in Nampa, where you were  
20 responsible for coming up with the specifications for  
21 the flush system, figuring out how many gallons of  
22 water you needed, figuring out what pump, what motor,  
23 and what pipe, and the like was required to get to  
24 that water, had you ever done that?

25 A. We did it at Pete DeGroot's with the help

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1 and advice of a lot of people. I mean, you don't do  
2 it all on your own, you know, the same thing.

3 Q. So did you do Chuck DeGroot's dairy with the  
4 help of a lot of people; or did you do it all on your  
5 own?

6 A. Oh, you have a lot of help. Now, I have  
7 Houle. I didn't have Houle at Pete's. I didn't have  
8 Houle flush valves. That was a problem. Pete still  
9 doesn't use Houle pumps. Actually, he doesn't use  
10 Houle anything, other than flush valves. I was taught  
11 to do it this way. At Pete's we did the air lines --  
12 which was weird, but we did it -- every air line was a  
13 half-inch PVC pipe, home runs from the compressor. A  
14 shit load of pipe. I mean, we don't do that anymore.

15 See, it's just kind of you learn as-you-go  
16 thing. What I know today, I didn't know when I did  
17 Chuck's. What I know at Chuck's, I didn't know at  
18 Pete's. Before Pete's, I did a flush system at  
19 VanBeek's dairy, and I didn't know nothing. I just  
20 did what the other guys did.

21 Q. Who all helped you come up with the flush  
22 system at Chuck DeGroot's dairy?

23 A. It's pretty standard. I mean, Houle helped  
24 me.

25 Q. Houle, that would be Troy Hartzell?

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1 A. Troy Hartzell and their company Houle.

2 Q. Any engineers at Houle help you design that  
3 system?

4 A. We talked to them. You know, just your work  
5 histories, what you've seen. You go drive dairies,  
6 and you look. That's it.

7 Q. You were still learning then at the point in  
8 time you undertook Chuck's dairy?

9 A. Yeah. Still learning today.

10 Q. Sure. You have a few more under your belt  
11 now, though; don't you?

12 A. Yeah, I've done five or six more, eight  
13 more. We're also -- we get involved in newer things,  
14 but not related to this.

15 MR. DINIUS: You know what, I'm going to stop for  
16 the day. The one thing I am going to reserve and  
17 continue his deposition until we get that design  
18 manual we've talked about, as well as some of the  
19 other service files you've indicated you have with  
20 respect to Chuck and the DeGroot Dairy.

21 Mike tell me how you want to handle the  
22 documents and various things that Mr. Standley has  
23 identified. Do you want me to send you a formal  
24 request for production on those? Can we do it  
25 informally? Do you want me to do a letter?

Bid : Stan Beltman  
De Groot Dairy

PVC Pipe :

Drains :	1500'	18"	100*	P.I.P.
	3	90°	100*	P.I.P.
OVERS. 11 Put in 2	11	T's	100*	P.I.P.

1839	Flush :	2800'	12"	125* P.I.P.
5+16+14+4		16	90°	125* P.I.P.
12+5		16	T's	125* P.I.P.
1140+240		1500	15"	125* P.I.
75		1	90°	125* P.I.
		1	T	125 P.I.

100 - 6"	Water :	3200'	4"	Sch 40
960' 4" 992'		3000	2"	Sch 40
180' 3/4 200' 3/4		250	1"	Sch 40

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

All miscellaneous parts and prices for RUC pipe not listed will be billed on cost plus 15% basis.

Price : \$54,429.80

### Construction

This price involves the work to bury all the water line outside the parlor area. It also includes all flush pipe, drain pipe, air lines and electrical conduit to be buried. This price includes all work to set flush valves in and around freestalls, hook up air lines to valves from controllers pull electrical wire to controllers and make flush system operation. All electrical lines and air lines will be in conduit.



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

### Manure Equipment

Slope Screens	2
Roller Press	1
4" Agi. Pumps	2
8" Floating Flush Pump	2
Lane Valves	14
Area 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.V.C. pipe for plumbing in around reception pits and waste equipment will be an extra at time of installation. As will construction work to place

Price \$ 119, 575

Kurt Stoll

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 to Standley; correct?  
 2 A. Yes.  
 3 Q. How about the grading work?  
 4 A. That went to Brian Showalter.  
 5 Q. Does Mr. Showalter have a company?  
 6 A. Yes, I believe it's in Marsing.  
 7 Q. Do you know what the company is called?  
 8 A. Showalter -- no. It's Showalter something.  
 9 Q. And then the electrical work, who did the  
 10 sub work on that?  
 11 A. Town & Country.  
 12 Q. Now with regard to any of these  
 13 subcontractors that Beltman Welding retained to do  
 14 the work on your dairy, did you have any input at all  
 15 as to whether you wanted those subcontractors  
 16 utilized?  
 17 A. We went with the subcontractors that were  
 18 what we thought were the best available.  
 19 Q. Did you sit down and discuss the  
 20 subcontractors with Beltman Welding as to whether you  
 21 thought they were appropriate for the job they were  
 22 supposed to be doing?  
 23 A. Like I said, Beltman Welding, he was the  
 24 general contractor. And when it came to the  
 25 subcontractor, you have choices in some and some you

1 A. In the di magazines that are sent to  
 2 the dairy industry.  
 3 Q. What type of magazines?  
 4 A. Like Progressive Dairyman here in Idaho.  
 5 Q. Did Progressive Dairyman ever advertise any  
 6 other entities that did manure-handling  
 7 installations?  
 8 A. They may have.  
 9 Q. Are you aware of any others?  
 10 A. At the time -- I may have been aware of  
 11 them, but you go usually with the one that you feel  
 12 is an expert in the area of manure handling.  
 13 Q. Just so I'm clear, as far as utilizing  
 14 Standley to do the manure-handling system at your  
 15 dairy, did you have discussion with Beltman as to  
 16 whether Standley would be the appropriate party to do  
 17 that work?  
 18 A. It was just more or less understood that he  
 19 would do it.  
 20 Q. Prior to moving to Idaho, you had a dairy up  
 21 in Washington State; correct?  
 22 A. Yes.  
 23 Q. Did you ever utilize Standley for any work  
 24 up at your dairy in Washington?  
 25 A. No.

1 don't.  
 2 Q. How about with regard to Cooper  
 3 Construction? Did you have any choice there?  
 4 A. The choice was made by Beltman Welding.  
 5 Q. How about utilizing Dairy Services for the  
 6 dairy equipment? Did you have any input on that?  
 7 A. That was my decision.  
 8 Q. How about the decision to retain Standley to  
 9 do the manure handling system? Did you have any  
 10 input?  
 11 A. Most of -- like I said before, there's not a  
 12 whole lot of manure handling contractors, so we went  
 13 with what was available.  
 14 Q. Did Beltman give you any choice other than  
 15 Standley?  
 16 A. Well, if you only have one, what choice do  
 17 you have?  
 18 Q. That is true. But I'm asking you: Were  
 19 there any other choices out there that Beltman gave  
 20 you?  
 21 A. No.  
 22 Q. Were you aware of Standley prior to the  
 23 decision to build your dairy?  
 24 A. Yes.  
 25 Q. And how were you aware of Standley?

1 Q. Going back to your family. Your family was  
 2 in the dairy business back in California, too; is  
 3 that correct?  
 4 A. Yes.  
 5 Q. Did anybody from your family ever utilize  
 6 Standley in California for any type of work?  
 7 A. Not that I'm aware of.  
 8 Q. In arriving at the decision to use Beltman  
 9 as your general contractor, did you have any  
 10 discussions with -- strike that.  
 11 When you discussed utilizing Beltman Welding  
 12 as your general contractor, did you have a contact  
 13 person at Beltman that you dealt with?  
 14 A. Yes.  
 15 Q. Who was that?  
 16 A. Stan Beltman.  
 17 Q. Tom Beltman was the individual with Beltman  
 18 Construction who was on-site doing, number one, the  
 19 freestall installation and the pole work and then,  
 20 number two, it was his job to oversee the  
 21 subcontractors?  
 22 A. I don't know what arrangement he had with  
 23 Stan, but he did oversee the project, yes.  
 24 Q. Did you ever have any discussions with  
 25 Stan Beltman as to the scope of Tom Beltman's duties

1 Q. So after that initial call by 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 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 any of the problems?  
 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 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?

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, )

vs. ) Case No. CV 01-7777

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

corporation, )

Defendant. )

**COPY**

CHARLES DeGROOT, and DeGROOT )

FARMS, LLC, )

Plaintiffs, )

vs. )

BELTMAN CONSTRUCTION, INC., d/b/a )

BELTMAN WELDING AND CONSTRUCTION, )

a Washington corporation, )

Defendant/Third Party Plaintiff, ) DEPOSITION OF STANLEY

vs. ) BELTMAN taken on

STANDLEY TRENCHING, INC., d/b/a ) December 4, 2006

STANDLEY & CO., an Idaho )

corporation, and J. HOULE & FILS, ) REPORTED BY:

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1 thank you. Okay.  
 2 MR. McCURDY: Is it too late to object?  
 3 MR. KELLY: Yes, there is a protective  
 4 order.  
 5 MR. McCURDY: I object to the answer,  
 6 not the question.  
 7 MS. BUXTON: I object the compliments.  
 8 Q. (BY MR. KELLY) All right. Let me ask  
 9 you then on your bid --  
 10 A. I think the girl who worked for me  
 11 didn't cross-reference the numbers very well,  
 12 so...  
 13 Q. Okay. All right. Well, let me ask  
 14 you -- the next section under plumbing, it says,  
 15 "Flush main, 15-inch 125 PVC 1,200 feet." And if  
 16 you look under Mr. Standley's bid under flush, it  
 17 says 2800 feet 12-inch; correct?  
 18 A. Yes.  
 19 Q. Okay. Why the difference there?  
 20 A. There again, I don't know.  
 21 Q. But, again, your bid was submitted to  
 22 Mr. DeGroot after you received Mr. Standley's  
 23 bid; correct?  
 24 A. Correct, I do believe so.  
 25 Q. Because that's what you based your bid

1 A. No, there is not.  
 2 Q. Is Mr. Standley an engineer, as far as  
 3 you know?  
 4 A. As far as I know, no.  
 5 Q. Did you ever discuss with Mr. Standley,  
 6 Mr. DeGroot or anyone for that matter, retaining  
 7 an engineer to actually do a design on any part  
 8 of the dairy, including the manure system?  
 9 A. I was instructed to rely on his  
 10 expertise on it, Mr. Standley's.  
 11 Q. By who?  
 12 A. By Mr. DeGroot.  
 13 Q. And why was that; do you have any idea  
 14 why?  
 15 A. I think Mr. DeGroot had a high level of  
 16 confidence in Mr. Standley's opinion.  
 17 Q. Okay. Did you suggest that you retain  
 18 an engineer for the job?  
 19 A. No, I did not.  
 20 Q. And just to be clear, Mr. Beltman, did  
 21 you consider yourself, after this bid of June  
 22 4th, 1999 was accepted by Mr. DeGroot, to be the  
 23 general contractor on the job, other than the  
 24 barn parlor?  
 25 A. Yeah, on my portion of the job.

1 on, what Mr. Standley had provided?  
 2 A. Yes.  
 3 Q. Now, if you look just at Mr. Standley's  
 4 bid, sir, essentially, it looks like the first  
 5 page of Mr. Standley's bid is this piping  
 6 material; correct, for the drains, flush lines,  
 7 and water lines?  
 8 A. Yes, that is.  
 9 Q. Okay. And the second page of his bid,  
 10 again, Exhibit 13, essentially, just discusses  
 11 the construction, the burying the water lines,  
 12 drainpipes, air lines, electrical conduit;  
 13 correct?  
 14 A. Correct.  
 15 Q. Okay. And then the third page  
 16 discusses the manure equipment that will be  
 17 provided on site?  
 18 A. Correct.  
 19 Q. And then it continues over to the  
 20 fourth page; is that correct?  
 21 A. Yep.  
 22 Q. Now, in this document, Mr. Beltman, is  
 23 there any reference whatsoever to -- there's no  
 24 reference to a design of a manure handling 47  
 25 system; is there?

1 Q. And would you consider Mr. Standley and  
 2 his company as a subcontractor to Beltman  
 3 Construction?  
 4 A. Yes.  
 5 Q. And would you consider your brother,  
 6 Tom Beltman, to be the on-site foreperson at that  
 7 facility?  
 8 A. Yes.  
 9 Q. And do you believe that your brother's  
 10 duties were to oversee the work of both, Beltman  
 11 Construction and the subcontractors at the site?  
 12 A. Yes, but the subcontractor -- yes, the  
 13 subcontractor's expertise does not fall under  
 14 ours. You rely on their expertise. It's like  
 15 building a house. The guy that puts the heating  
 16 system in, you rely on his expertise.  
 17 Q. If there were a problem with  
 18 Mr. Standley's work, would you had expected your  
 19 brother to advise you of such problems?  
 20 A. Yes.  
 21 Q. At any point in time during the  
 22 construction of the DeGroot Dairy, did your  
 23 brother ever come to you with any problems or  
 24 concerns about Standley's work at the DeGroot

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, )

vs. ) Case No. CV 01-7777

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

corporation, )

Defendant. )

\_\_\_\_\_ )

CHARLES DeGROOT, and DeGROOT )

FARMS, LLC, )

Plaintiffs, )

vs. )

BELTMAN CONSTRUCTION, INC., d/b/a )

BELTMAN WELDING AND CONSTRUCTION, )

a Washington corporation, )

Defendant/Third Party Plaintiff, ) DEPOSITION OF THOMAS

vs. ) BELTMAN taken on

STANDLEY TRENCHING, INC., d/b/a ) December 4, 2006

STANDLEY & CO., an Idaho )

corporation, and J. HOULE & FILS, ) REPORTED BY:

INC., ) COLLEEN P. KLINE, CSR .

Third Party Defendants. ) No. 345

\_\_\_\_\_ ) Notary Public



1 see that?

2 A. Yes, I do.

3 Q. Have you ever seen this document  
4 before?

5 A. Who's it from?

6 Q. I'm just asking if you've seen this  
7 document.

8 A. I don't think so.

9 Q. I'll represent to you, it's the bid of  
10 Standley Trenching to Beltman Construction for  
11 the work at the DeGroot Dairy. Does that help  
12 you remember if you've seen this document?

13 A. No, I haven't. I have not seen this,  
14 no.

15 Q. Did you ever have any discussion with  
16 either Kurt Standley or anyone with Standley  
17 trenching as to what their job duties were at the  
18 DeGroot Dairy?

19 A. Not that I recall.

20 Q. Did you ever have any discussions with  
21 Stan Beltman as to what the Standley duties were  
22 at the DeGroot Dairy?

23 A. Not that I recall.

24 Q. Did you ever have any discussions with  
25 anyone as to the scope of Standley's work at the

1 DeGroot Dairy while you were the overseer?

2 A. I wasn't really their overseer.

3 Q. You were the overseer of the job,  
4 though, you testified to that earlier; correct?

5 MS. BUXTON: Object to the form of the  
6 question. It's misstating prior testimony.

7 Q. (BY MR. KELLY) So you had no oversight  
8 over Standley at this job site; is that correct?

9 MS. FISCHER: I'm going to make the  
10 same objection I've made before. This discussion  
11 took place in the October 23rd, 2002 deposition.  
12 There was extensive questioning about whether Tom  
13 oversaw Standley's work at the dairy. He  
14 explained why he did not on pages 30 through 31.

15 THE WITNESS: That was not my  
16 expertise.

17 Q. (BY MR. KELLY) What was not your  
18 expertise?

19 A. The waste management system.

20 Q. So did you at any point in time have  
21 consultations with anyone from Standley while  
22 they were on the job site in regard to their  
23 building of the waste management system?

24 A. What are you -- could you specify?

25 Q. Sure, you indicated that wasn't your

1 expertise. So all I'm asking you is, at any  
2 point in time, did you discuss the work that  
3 Standley was doing at the job site in regard to  
4 the waste management system?

5 A. Oh, I'm sure we did.

6 Q. Did you have any specific discussions  
7 with Standley or any of the Standley employees in  
8 regard to work that you believe was substandard  
9 at the DeGroot Dairy?

10 A. Not that I recall.

11 Q. At any point in time during the  
12 construction of the DeGroot Dairy, did you, in  
13 fact, believe that any of the work performed by  
14 Standley was substandard?

15 A. That I believed it was?

16 Q. Yes.

17 A. It was not my expertise. So how would  
18 I know?

19 Q. So your answer would be, no?

20 A. Yes.

21 (Exhibit 19 marked.)

22 Q. (BY MR. KELLY) Mr. Beltman, what has  
23 been put in front of you is a document marked  
24 Deposition Exhibit 19, with the heading, "Beltman  
25 Construction, Inc.," dated September 17th, 2006.

1 At the bottom, it appears to be signed by Stan  
2 Beltman.

3 A. Mm-hmm.

4 Q. Do you know if that's your brother's  
5 signature?

6 A. It looks like it.

7 Q. And it appears to be directed to a  
8 Chuck, which I am presuming is Chuck DeGroot.  
9 What I would like to do is have you -- first of  
10 all, have you seen this document before?

11 A. No, I have not.

12 Q. Are you aware of a letter being sent to  
13 Mr. DeGroot by your brother in or around  
14 September 17th of this year?

15 A. He mentioned it to me, yes.

16 Q. Okay. In what context did he mention  
17 it to you?

18 A. He just said he was sending him a  
19 letter.

20 Q. Did you discuss the content of the  
21 letter?

22 A. No, he did not.

23 Q. What I want you to do is look at the  
24 second paragraph, the second sentence of the

25 second paragraph, which reads "I have not seen this document before."

1 subcontractors who were on site, were paid by  
2 Beltman Construction; fair statement?

3 A. Yes, that would be fair.

4 Q. Okay. When one of those entities would  
5 seek payment, would they give a bill to you, or  
6 send it to your brother, or how would that  
7 happen?

8 A. Directly to Stan.

9 Q. When Stan got a bill from one of the  
10 people on site indicating they wanted to be paid  
11 for something, would he verify with you whether  
12 or not that work had been done and was  
13 satisfactory?

14 A. He would come and inspect it himself.

15 Q. Would he do that every time?

16 A. I never had no part in paying anybody,  
17 no.

18 Q. How about -- because that wasn't my  
19 question.

20 A. Well, no, they didn't give it to me. I  
21 didn't -- I didn't have nothing to do with that  
22 part of it. He would inspect that that had been  
23 done, if he should pay them or not.

24 Q. When he would come in and inspect, and  
25 it was work that one of the other entities had

1 done, not Beltman, and the work was unacceptable,  
2 what steps would he take, if any? What would he  
3 do?

4 A. I don't know what he did.

5 Q. Would he tell you to have them fix it,  
6 or would he tell them to fix it, or what would he  
7 do?

8 A. He would probably tell them himself.

9 Q. Not probably. Do you have any  
10 recollection of him telling any of the subs or  
11 the other entities what to do?

12 A. Not that I'm aware of.

13 Q. Do you have a recollection of him  
14 telling you to tell the other people to correct  
15 things?

16 A. No.

17 Q. Were there things that had to be  
18 corrected, ever?

19 A. Things I did?

20 Q. Okay. We'll start there.

21 A. No.

22 Q. What about things the other people did  
23 for which Beltman was responsible?

24 MS. FISCHER: I'm going to object,  
25 again, to this line of questioning. You are

1 outside the scope of what you are allowed to do.

2 These were questions that all could have been

3 asked at the original deposition. And there is

4 nothing new that has occurred since then, or with  
5 this new lawsuit that would have precluded you  
6 from asking those questions at that time.

7 MR. KELLY: You hit the words on the  
8 head, "new lawsuit."

9 MS. BUXTON: You can answer, if you  
10 remember the question.

11 THE WITNESS: Not that I recollect.

12 MR. McCURDY: That's all I have.

13 Thanks.

14 EXAMINATION

15 QUESTIONS BY MS. FISCHER:

16 Q. I'm just going around the table, but  
17 I'll be much quicker. As you know, my name is  
18 Julie Fischer. I represent Chuck DeGroot in  
19 these proceedings. Just a couple of quick  
20 questions.

21 At the time you were working on the  
22 DeGroot Dairy, was Standley the representative  
23 for Houle?

24 A. As far as I know, yes.

25 Q. Would you agree that Standley had more

1 expertise in installation of manure handling  
2 equipment than did you at the time the DeGroot  
3 Dairy was being constructed?

4 A. Yes.

5 Q. And is it fair that you deferred to  
6 Standley during the construction process to make  
7 decisions regarding installation of manure  
8 handling systems?

9 A. Yes.

10 Q. And were you in any position to  
11 question Standley's decisions with respect to  
12 sizing, piping, and construction of the manure  
13 handling system?

14 A. No, I was not.

15 MS. FISCHER: That's all the questions  
16 I have. Thanks.

17 THE WITNESS: Okay.

18 EXAMINATION

19 QUESTIONS BY MS. BUXTON:

20 Q. Mr. Beltman, as you know, I'm your  
21 attorney, Susan Buxton, and I have one question  
22 for you. You were asked a question about helping  
23 your brother, Stan, with the pricing. And during  
24 your deposition in 2002, which was dated October  
25 22nd, 2002, you testified that you did not

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

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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.

Page 31

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?

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

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

**COPY**

vs. ) Case No. CV 2001-777

KURT STANDLEY, STANDLEY ) DEPOSITION OF:

TRENCHING, INC., d/b/a ) ERNEST DeGROOT

STANDLEY & CO., and J. HOULE ) November 12, 2003

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

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

vs. )

CHARLES DeGROOT, and DeGROOT )  
FARMS, LLC, )  
Counterdefendants. )

REPORTED BY:

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1 except feed the dry cows once a day.  
 2 Q. Was your dad on location at that time? By  
 3 "location," I mean on the Idaho dairy.  
 4 A. I'm not real sure, but I believe so.  
 5 Q. Were any of your employees or the employees of  
 6 DeGroot Dairy on site in Idaho during those three to  
 7 four days?  
 8 A. No.  
 9 Q. So as far as either owners or workers of  
 10 DeGroot Dairy, just you and your father were on site  
 11 prior to the cows arriving?  
 12 A. Yes.  
 13 Q. Was there all new equipment installed on the  
 14 Idaho dairy?  
 15 A. Yes.  
 16 Q. Who provided training on the new equipment?  
 17 A. Which new equipment?  
 18 Q. On any of the new equipment.  
 19 A. Well, we had a lot of different vendors.  
 20 Q. Okay. Let's go through who those vendors were  
 21 and whether or not training was provided to you. Okay?  
 22 A. Okay.  
 23 Q. Go ahead, if you want to just start with who  
 24 the vendors were.  
 25 A. There was the parlor equipment, which was the

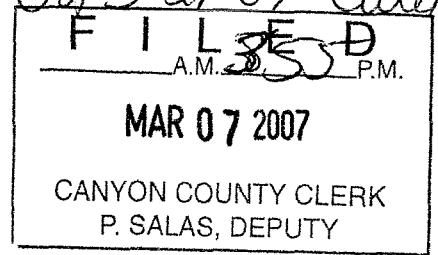
1 after we had started milking.  
 2 Q. What did you do during the day or two that you  
 3 were milking and it was not operational?  
 4 A. Nothing.  
 5 Q. You didn't do any kind of manual cleaning or  
 6 anything like that?  
 7 A. No. There were only 300 cows on the place.  
 8 Q. Okay. So a day 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

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Page 40

1 milking machines and whatnot. As far as training, there  
 2 was really nothing that needed to be trained there. The  
 3 only training that needed to be done was as far as  
 4 milking and milking procedures.  
 5 Q. Did you receive training in that or is that  
 6 something that you decided yourself?  
 7 A. I established that once I determined who I was  
 8 going to hire. That is one thing I think I was doing in  
 9 those days.  
 10 Q. What was that?  
 11 A. Hiring employees, milkers.  
 12 Q. What other equipment was new that you had to  
 13 be trained on?  
 14 A. Our loader, our CAT loader.  
 15 Q. Who trained you on that?  
 16 A. That was Western States.  
 17 Q. What about on the manure handling system; was  
 18 that all new equipment?  
 19 A. Yes.  
 20 Q. Earlier you said that in those last three or  
 21 four days the manure system was not ready, that it still  
 22 needed to be -- there were power issues and they were  
 23 still hooking up some of the pipes at one point in time.  
 24 Was the manure handling system operational?  
 25 A. I believe they had it running a day or two

1 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



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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

<p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Plaintiffs/Counterdefendants,</p> <p>-vs-</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY &amp; CO., and J. HOULE &amp; FILS, INC., a Canadian corporation;</p> <p>Defendants,</p> <p>and</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY &amp; CO.,</p> <p>Counterclaimant.</p>	<p><b>CASE NO. CV 2001-7777</b></p> <p><b>MEMORANDUM IN OPPOSITION TO THIRD PARTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</b></p>
---	---



<p>CHARLES DeGROOT, and DeGROOT DAIRY, LLC,</p> <p>Plaintiffs,</p> <p>-vs-</p> <p>BELTMAN CONSTRUCTION, INC., d/b/a BELTMAN WELDING AND CONSTRUCTION, a Washington corporation;</p> <p>Defendant/Third Party Plaintiff</p> <p>v.</p> <p>STANDLEY TRENCHING, INC. d/b/a STANDLEY &amp; CO., an Idaho corporation, and J. HOULE &amp; FILS, INC.</p> <p>Third Party Defendants.</p>	<p><b>CASE NO. CV 2005-2277</b></p>
---	-------------------------------------

COMES NOW, Plaintiffs CHARLES DeGROOT, and DeGROOT DAIRY, LLC (collectively, "DeGroot"), by and through their undersigned counsel of record, the law firm of White Peterson, P.A., and hereby submit their Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment.

### INTRODUCTION

The factual and procedural history of this case is well known to the Court. DeGroot initially filed its First Amended Complaint and Demand for Jury Trial against Defendants Standley Trenching, Inc. d/b/a Standley & Co. ("Standley") and J. Houle & Fils, Inc. ("Houle") on December 21, 2001, alleging (1) breach of contract against Standley; (2) rescission against Standley and Houle; (3) breach of warranties against Standley and Houle; (4) breach of implied covenant of good faith and fair dealing against Standley; and (5) violations of the Idaho



Consumer Protection Act against Standley and Houle.<sup>1</sup> DeGroot later filed a Second Amended Complaint which was similar in all material respects to the First Amended Complaint, but did not include claims against Kurt Standley and Scott Standley individually. Standley filed a motion for summary judgment on January 31, 2005 on the Second Amended Complaint on the theory that DeGroot was precluded from asserting claims against Standley because there was no direct contractual relationship between DeGroot and Standley. The Court granted Standley's motion and entered an order to that effect on March 22, 2005.<sup>2</sup>

Prior to the Court's entry of summary judgment in favor of Standley, on March 4, 2005, DeGroot filed its Complaint and Demand for Jury Trial against Beltman Construction, Inc. d/b/a Beltman Welding and Construction ("Beltman") in the Third Judicial District of Idaho in and for the County of Canyon, Case No. CV05-2277.<sup>3</sup> Beltman filed its Third Party Complaint and Demand for Jury Trial against Standley on March 22, 2005. The Court entered an order consolidating the Beltman litigation with the above-entitled matter on April 19, 2005. Thereafter, on May 11, 2005, Beltman filed its First Amended Third Party Complaint and Demand for Jury Trial against Standley.

DeGroot and Beltman eventually settled. As part of the settlement, DeGroot took an assignment of Beltman's claims against Standley. Therefore, on September 11, 2006, DeGroot move for an order pursuant to Rule 25(c) of the Idaho Rules of Civil Procedure substituting it as the Third Party Plaintiff. The Court eventually granted the motion for substitution and entered an order to that effect on October 25, 2006.

Standley now moves this Court for summary judgment on the First Amended Third Party Complaint on essentially three theories: (1) DeGroot cannot establish negligence on the part of

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<sup>1</sup> The First Amended Complaint included claims against Kurt Standley and Scott Standley individually as well.

<sup>2</sup> The Court entered an Order Confirming Entry of Summary Judgment on March 28, 2005.

<sup>3</sup> DeGroot filed its First Amended Complaint and Demand for Jury Trial on March 21, 2005.

Standley; (2) even if negligence can be established, the economic loss rule precludes recovery; and (3) DeGroot's claims as set forth in the First Amended Third Party Complaint are barred by applicable statutes of limitations. For the reasons that follow, Standley's motion must fail.

### **STATEMENT OF DISPUTED FACTS**

A complete recitation of the factual background (including a review of the numerous defects in the manure handling system designed and installed by Standley) is set forth in DeGroot's Memorandum in Opposition to Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Motion for Summary Judgment, filed on February 15, 2005.<sup>4</sup> However, the following additional facts are pertinent to the motion presently before the Court.

In February 1999, DeGroot spoke with Kurt Standley at a trade show in California about installing a manure handling system at his new dairy. Deposition of Charles DeGroot, October 22, 2002 ("DeGroot Depo. 10/22/02"), 86:17 – 88:7 (attached as Exhibit A to Affidavit of Jill S. Holinka in Support of Opposition to Third Party Defendant's Motion for Summary Judgment); Deposition of Kurt Standley, January 28, 2004 ("Standley Depo."), 51:20-24 (attached as Exhibit B to Holinka Affidavit). DeGroot was also aware of Standley and its services by virtue of advertisements Standley placed in dairy trade magazines. DeGroot Depo. 1/27/04, 216:25 – 217:12, attached as Exhibit C to Holinka Affidavit. Standley was displaying Houle equipment at the trade show as a dealer of Houle equipment. DeGroot Depo. 10/22/02, 87:18 – 88:1. Although Standley had only recently become a dealer for Houle, it had been concentrating on doing dairy construction work since 1994. Standley Depo., 16:7 – 17:25.

Some time following the trade show, Standley contracted with Beltman to supply and install a manure handling system for DeGroot's dairy. Standley Depo., 74:13-23, Exhibit 2. The

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<sup>4</sup> DeGroot relies on the Affidavit of Kevin E. Dinius, submitted in support of Plaintiffs' Opposition to Motion for Summary Judgment, and the attachments thereto for purposes of the instant motion.

contract called for Standley to install a flood system, drain system and manure handling equipment. *Id.* at 95:7-24. In connection with the contract, Standley selected the number of slope screens, pumps and pump valves to be used, as well as the pipe sizing and type of pump to be used. *Id.* at 75:23 – 77:15, 84:6-18, 94:12-20, 113:16-21. Standley helped design the flush system based on its own experience and with the help of engineers from Defendant Houle. *Id.* at p. 282:21 – 283:6.

In connection with the manure handling system, Beltman relied upon Standley's experience and expertise in identifying the specifications for and installing the manure handling system. Deposition of Stanley Beltman, December 4, 2006 ("S. Beltman Depo."), 27:5-16, 28:9-16 (attached as Exhibit D to Holinka Affidavit); Deposition of Tom Beltman, December 4, 2006 ("T. Beltman Depo. 12/4/06"), 30:17-19, 63:25 – 64:14 (attached as Exhibit E to Holinka Affidavit); Deposition of Tom Beltman, October 23, 2002 ("T. Beltman Depo. 10/23/02"), 31:13-18 (attached as Exhibit F to Holinka Affidavit). DeGroot, too, relied upon Standley's expertise and representations regarding the Houle equipment that would be installed at the dairy during the construction of the dairy. DeGroot Depo. 10/22/02, 148:21-23, 261:19-24; Deposition of Ernest DeGroot ("E. DeGroot Depo."), 40:21-24 (attached as Exhibit G to Holinka Affidavit).

### **SUMMARY JUDGMENT STANDARD**

Under Idaho law, summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c); *see also Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). In applying this standard, the Court liberally construes all disputed facts in favor of the non-moving party, and will draw all reasonable inferences and conclusions supported by the

record in favor of the party opposing the motion. *See McKay v. Owens*, 130 Idaho 148, 152, 937 P.2d 1222, 1226 (1997). However, the adverse party may not rest on the mere allegations or denials in his pleadings, but his response must set forth specific facts showing that there is a genuine issue for trial. *See Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000).

## ANALYSIS

### A. Standley was Negligent in its Installation of the Manure Handling System.

#### 1. *Standley had a Duty to Design and Install the Manure Handling System in a Workmanlike Manner.*

Standley first argues that Beltman has failed to state a claim against it because Standley had no duty separate and apart from its contractual obligations that would form the basis of a negligence action. Preliminarily, this argument ignores the undisputed fact that it was Standley and Houle that designed the manure handling system. While Standley would have this Court adopt a narrow definition of the term “design”, the fact remains that Kurt Standley admits he was the one who came up with the specifications—with the assistance of Houle representatives—for DeGroot’s manure handling system.<sup>5</sup> Whether or not Standley’s contract with Beltman called for “design” of the manure handling system, it was Standley’s specifications—as the one with expertise in manure handling systems and equipment—that was ultimately relied upon by Beltman in the construction of the dairy.

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<sup>5</sup> Standley urges the Court to find that Beltman is barred from asserting a negligent design claim against it because DeGroot’s claim against Beltman included only one reference to Standley’s negligent design of the manure handling system. The Court must reject Standley’s invitation to so hold. The Idaho Rules of Civil Procedure establish a system of notice pleading. *Cook v. Skyline Corp.*, 135 Idaho 26, 33, 13 P.3d 857, 864 (2000). In such a system, a pleading “which sets forth a claim for relief ... need only contain ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in addition to alleging jurisdiction of the court and a demand for judgment ....” *Archer v. Shields Lumber Co.*, 91 Idaho 861, 866, 434 P.2d 79, 84 (1967) (quoting I.R.C.P. 8(a)). Notice pleading frees the parties from pleading particular issues or theories, and allows parties to get through the courthouse door by merely stating claims upon which relief can be granted. *See Dursteler v. Dursteler*, 108 Idaho 230, 233, 697 P.2d 1244, 1247 (Ct.App.1985). Thus, it makes little difference that DeGroot’s complaint against Beltman only references “design” one time, particularly where DeGroot has contended throughout these proceedings that it was Standley’s design and installation of the manure handling system that caused DeGroot’s damages.

As the Idaho Supreme Court has recognized, the “law governing the ability to obtain remedies for breach of contract, as well as tortious behavior, is confusing, with few, if any, court decisions on the subject.” *Taylor v. Herbold*, 94 Idaho 133, 138, 483 P.2d 664, 669 (1971). Ordinarily, a breach of contract is not a tort. A contract may, however, create a state of things which furnishes the occasion for a tort. 38 Am. Jur. 662, Negligence s 20. If the relation of the plaintiff and the defendants is such that a duty to take due care arises therefrom irrespective of contract and the defendant is negligent, then the action is one of tort. To found an action in tort, there must be a breach of duty apart from the nonperformance of a contract. 52 Am. Jur. 379, Torts, s 26.

The Idaho Court of Appeals has previously recognized a cause of action for negligence in the construction of improvements to real property. In *Hibbler v. Fisher*, 109 Idaho 1007, 1013, 712 P.2d 708, 714 (Ct. App. 1985), the court upheld a jury verdict finding of negligence relating to the construction of a water system in a trailer park. There, the purchasers of the trailer park filed suit against the sellers for misrepresentation, breach of implied warranty and negligence stemming from the seller’s installation of a water system in a “new” section of the trailer park that ultimately failed. In upholding the jury verdict, the Idaho Court of Appeals found it significant that the seller’s hired a plumbing contractor who was not a licensed plumber, and that the seller’s had failed to obtain a permit for installation of the water system. *Hibbler*, 109 Idaho at 1013, 712 P.2d at 714. The court also noted the specific problems with the water system and the expert testimony which revealed that the joints were improperly glued. *Id.* The court concluded that there was substantial evidence leading to the “rational inference that the entire system, including the main line, was negligently installed.” *Id.* The court further concluded that Mr. Fisher, the seller, “designed the system in such a manner that the completed system was in

violation of the state plumbing code.” *Id.* at 1014, 712 P.2d at 715. Notably, Mr. Fisher was not a licensed engineer, plumber, contractor or other professional.

Obviously, the sellers in *Hibbler* had a duty to install the water system in a workmanlike manner and design the system so that it complied with state plumbing standards and operated properly. Similarly in this case, Standley had a duty to design and install the manure handling system so that it would function properly. *See Stephens v. Stearns*, 106 Idaho 249, 256, 678 P.2d 41, 48 (holding that builder owed plaintiff common law duty of ordinary care to perform his work in a workmanlike manner). It was Standley that came up with the specifications for DeGroot’s manure handling system and undertook the work to install the system. Those specifications included: the use of 15 inch pipe; two roller presses and two slope screen; a 40 horsepower pump; and two agitator pumps. Each of these design specifications were improper and contributed to the complete ineffectiveness of the manure handling system at the DeGroot dairy.<sup>6</sup> This evidence clearly leads to the rational conclusion that the manure handling system was negligently designed and installed.

2. *The Economic Loss Rule Does Not Apply Because a Special Relationship Existed.*

Standley next argues that even if Beltman has properly stated a claim for negligence, the economic loss rule bars recovery of damages. The general rule in Idaho is that purely economic losses are not recoverable in a negligence action because there is no duty to prevent economic loss to another. *Blahd v. Richard B. Smith, Inc.*, 141 Idaho 296, 300, 108 P.3d 996, 1000 (2005). Economic loss includes costs of repair and replacement of defective property which is the subject of the transaction, as well as commercial loss for inadequate value and consequent loss of profits or use. *Salmon Rivers Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 351, 544

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<sup>6</sup> See Exhibit K, attached to the Affidavit of Kevin E. Dinius, filed in support of Plaintiffs’ Opposition to Motion for Summary Judgment, filed February 15, 2005.

P.2d 306, 309 (1975). The Idaho Supreme Court has, however, recognized two exceptions to the economic loss rule. The first exception allows recovery for purely economic losses where a special relationship exists between the parties. *Duffin v. Idaho Crop Improvement Assoc.*, 126 Idaho 1002, 1008, 895 P.2d 1195, 1201 (1995). The second exception allows recovery where unique circumstances exist, which require a different allocation of risk. *Just's Inc. v. Arrington Constr. Co.*, 99 Idaho 462, 470, 583 P.2d 997, 1005 (1978).

With respect to the “special relationship” exception to the economic loss rule, the Idaho Supreme Court has held that the term “special relationship” refers to “those situations where the relationship between the parties is such that it would be equitable to impose such a duty.” *Duffin*, 126 Idaho at 1008, 895 P.2d at 1201. The special relationship exception has been applied in two situations. In *McAlvain v. General Ins. Co. of America*, 97 Idaho 777, 780, 554 P.2d 955, 958 (1976), the Idaho Supreme Court held that where a professional or quasi-professional performs his services negligently, he should be held liable for that negligence just as would an attorney, architect, engineer or physician. In *Duffin, supra*, the special relationship exception was applied where a potato seed certification entity held itself out as having expertise regarding a specialized function (potato seed certification), and by doing so knowingly induced reliance on its performance of that function. 126 Idaho at 1008, 895 P.2d at 1201.

Here, Standley, as a dealer of Houle equipment, held itself out as having special knowledge of manure handling equipment and installation of such equipment. DeGroot was first introduced to Standley and Houle at the Tulare Ag Show—at which Standley was exhibiting Houle equipment—in early 1999.<sup>7</sup> Standley had been in the business of dairy construction since 1994 and had done work for several dairies in the Treasure Valley prior to undertaking the DeGroot project. The record is further replete with references to Beltman’s and DeGroot’s

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<sup>7</sup> DeGroot had become aware of Standley through advertisements Standley placed in dairy trade magazines.

reliance on Standley with respect to the design and installation of the manure handling system. Both Tom and Stan Beltman clearly indicated that they did not have expertise in manure handling equipment or systems and therefore relied upon Standley for its expertise. Moreover, Chuck DeGroot indicated that Standley was the only entity in the Treasure Valley that installed manure handling systems at the time.<sup>8</sup> Against this backdrop, it is clear that Standley had a special relationship with Beltman and DeGroot such that it is equitable to impose liability on Standley for the significant economic losses it caused Beltman and, ultimately, DeGroot.

**B. Beltman's Breach of Contract and Breach of Warranty Claims are Not Barred by the Applicable Statutes of Limitations.**

*1. Beltman's Breach of Contract Claim is Governed by the Five Year Statute of Limitation Applicable to Actions on Written Contracts.*

Standley suggests that Beltman's breach of contract claim is barred under the four year statute of limitation found in Idaho Code § 28-2-725(a). In support of this assertion, Standley relies on *Farmers National Bank v. Wickham Pipeline Construction*, 114 Idaho 565, 759 P.2d 71 (1988). There, a subcontractor sought to recover, on an indemnification claim, from its pipe supplier for supplying defective pipe. The pipe supplier filed a motion for summary judgment arguing that the claim was barred by the statute of limitations applicable to sales contracts. The district court agreed and dismissed the claim. On appeal, the Idaho Supreme Court affirmed, holding that Idaho Code § 28-2-725 "controls all actions for breach of contract for the sale of goods," including claims for indemnification under a sales contract. 114 Idaho at 569, 759 P.2d at 75.

Unlike the circumstances in *Wickham Pipeline*, however, Standley's contract was not strictly a sales contract. Rather, Standley's contract was primarily one for the installation of pipe and the manure handling system. Consequently, the UCC does not apply. *See Steiner Corp. v.*

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<sup>8</sup> See DeGroot Depo., 1/27/04, 216:8-21.



*American Telegraph*, 106 Idaho 787, 790, 683 P.2d 435, 438 (1984) (noting that the UCC applies only to contracts for the sale of goods). Idaho applies the predominant factor test in determining whether the UCC applies to mixed sales/services contracts. *Fox v. Mountain West Elect., Inc.*, 137 Idaho 703, 710, 52 P.3d 848, 855 (2002). As the Idaho Supreme Court explained,

The test for inclusion or exclusion is not whether they are mixed, but, granting that they are mixed, whether their predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved (e.g., contract with artist for painting) or is a transaction of sale, with labor incidentally involved (e.g., installation of a water heater in a bathroom). This test essentially involves consideration of the contract in its entirety, applying the UCC to the entire contract or not at all.

*Fox*, 137 Idaho at 710, 52 P.3d at 855 (quoting *Pittsley v. Houser*, 125 Idaho 820, 822, 875 P.2d 232, 234 (Ct.App.1994)). Ordinarily, the question of whether a contract is one for goods or services is a question of fact. *U.S. v. City of Twin Falls*, 806 F.2d 862, 870 (9<sup>th</sup> Cir. 1986), cert. denied sub nom *City of Twin Falls v. Envirotech Corp.*, 482 U.S. 914, 107 S. Ct. 3185, 96 L.Ed.2d 674 (1987).

In *Fox*, the contract at issue involved the installation of a fire alarm system. Fox and Mountain West Electrical (MWE) met at a pre-bid meeting and decided to work together to submit a bid to the owner, Lockheed Martin. MWE was in the business of installing electrical wiring, conduit and related hookups, while Fox provided services in designing, drafting, testing and installation of fire alarm systems, and in ordering specialty equipment. 137 Idaho at 706, 52 P.3d at 851. The Idaho Supreme Court held that the contract at issue was predominantly one for services and the UCC therefore did not apply. The Court's analysis focused on the fact that the parties decided to work together based upon their differing areas of expertise. Ultimately, the Court concluded that the goods provided by Fox were incidental to the services he provided. 137 Idaho at 710, 52 P.3d at 855.

Here, Standley's contract is one for both goods and services. However, it was Standley's design and installation services that were sought out by Beltman. As Beltman made clear, it had absolutely no expertise in the area of design and installation of manure handling systems. It relied upon Standley to provide those services in the construction of the DeGroot dairy facility. While Standley did provide the Houle equipment used in the manure handling system, the provision of these goods was only incidental to Standley's services in designing and installing the system. Because the contract was predominantly one for services, the UCC does not apply.

Once the determination is made that the UCC does not apply to Standley's contract with Beltman, it becomes clear that Beltman's claims against Standley are not barred by the applicable statute of limitations. The statute of limitations applicable to actions on written contracts is five (5) years. Idaho Code § 5-216. The statute of limitations does not begin to run until the cause of action accrues. *Rawleigh Medical Co. v. Atwater*, 33 Idaho 399, 195 P.2d 545 (1921). Here, the parties do not dispute that Beltman's cause of action accrued in April 2000, when the DeGroot dairy first became operational and it was discovered that the manure handling system was not functioning properly. Beltman filed his third party complaint against Standley on March 22, 2005—within the five year time period. Consequently, Beltman's action against Standley is not time barred.

2. *Even if the Four Year Statute of Limitation Applicable to Sales Contracts Applies in this Case, this Action was Timely Filed Under the Savings Clause of that Statute.*

Assuming, *arguendo*, that Idaho Code § 28-2-725(1) applies to Beltman's breach of contract and breach of warranty claims, the claims were timely filed under the savings provision of the statute, Idaho Code § 28-2-725(3). That section provides:

Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another

action for the same breach such other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

Idaho Code § 28-2-725(3). Here, DeGroot instituted an action against Standley for breach of contract and breach of warranties arising out of the construction and design of the manure handling system installed by Standley. This Court dismissed DeGroot's claims as against Standley on March 22, 2005, because there was no privity of contract between DeGroot and Standley; the merits of DeGroot's claims were not decided by this Court.<sup>9</sup> On March 4, 2005, DeGroot filed its Complaint against Beltman—well within the six month time frame imposed by Idaho Code § 28-2-725(3)—asserting identical claims for breach of contract and breach of warranties arising out of the installation and design of the manure handling system. Thereafter, on March 22, 2005, Beltman filed its Third Party Complaint against Standley—again, well within the six month period—asserting claims for breach of contract and breach of warranties arising out of Standley's installation and design of the manure handling system it sold as part of its bid. The circumstances of this case fall squarely within the savings provision of Idaho Code § 28-2-725(3). In this context, the claims asserted against Standley were timely filed.

3. *Beltman's Rescission Claim Should be Deemed Timely Where Standley had Notice of the Rescission as of June 18, 2001.*

Next, Standley urges this Court to hold that Beltman's claim for rescission is barred under the doctrine of laches and case law interpreting the UCC Article 2 statute of limitation. The defense of laches is a creation of equity and is a specie of equitable estoppel. *Huppert v. Wolford*, 91 Idaho 249, 420 P.2d 11 (1966). Whether a party is guilty of laches primarily is a question of fact. *Sword v. Sweet*, 140 Idaho 242, 249, 92 P.3d 492, 499 (2004). In order for

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<sup>9</sup> The Court previously announced its findings of fact and conclusions of law at the hearing on Standley's motion for summary judgment.

laches to apply, the trier of fact must find: (1) a lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense. *Id.* In this case, it is undisputed that DeGroot notified Standley in June 2001 of its rescission of the manure handling system. DeGroot filed its initial Complaint against Standley on September 12, 2001, which included a cause of action for rescission. Although DeGroot's claims against Standley were ultimately dismissed, DeGroot timely asserted its claims against Beltman. Subsequently, Beltman asserted its claim for rescission against Standley. The question for the jury to decide is whether, under the peculiar circumstances of this case, DeGroot and/or Beltman diligently pursued its rescission claim.

Courts that have applied the doctrine of laches to actions involving the sale of goods have done so where there has been a complete failure to prosecute an action for rescission. For example, in *Dicenso v. Bryant Air Conditioning Co., a Division of Carrier Corp.*, 643 P.2d 701, 703 (Ariz., 1982), the Arizona Supreme Court applied the doctrine of laches to bar claims against the defendant where, although the defendant was named in the complaint, it was not served until three years after the complaint was filed. In announcing its decision, the court relied upon the policy underlying the statute of limitations, which it described as follows:

The policy underlying the statute of limitations is primarily for the protection of the defendant, and the courts, from litigation of stale claims where plaintiffs have slept on their rights and evidence may have been lost or witnesses' memories faded. This policy is sound and necessary for the orderly administration of justice.

*Dicenso*, 643 P.2d at 703 (quoting *Brooks v. Southern Pacific Co.*, 105 Ariz. 442, 444, 466 P.2d 736, 738 (1970)). Similarly, in *John P. Saad & Sons, Inc. v. Nashville Thermal Transfer Corp.*, 715 S.W.2d 41, 46 (Tenn. 1986), the Tennessee Supreme Court applied the doctrine of laches to bar a claim against the defendant power plant operator where the plaintiff supplier had failed to

provide any written demand or notice regarding the contract for nearly four years after delivery of the last batch of oil. The court discussed at length the policy underlying the doctrine of laches:

The neglect of a person to make complaint, or bring suit in due season, he being sui juris and knowing the facts, or having the means of knowledge, is called laches; and where there has been gross laches in prosecuting rights, or long and unreasonable acquiescence in adverse rights, Courts of Equity refuse to interfere, they act either by analogy to the statutes of limitations, or upon their own inherent doctrine of discouraging antiquated demands. The Court realizes the difficulty of doing entire justice, when the original transaction has become obscured by time and the evidence lost, and deems it good public policy to allow claims and titles long acquiesced in to remain in repose.

*Id.* (internal citations and quotations omitted).

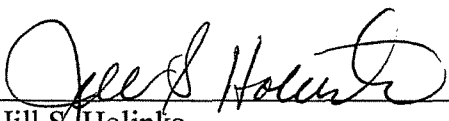
Considered against these policies, it is clear that the doctrine of laches does not apply to bar Beltman's rescission claim. Standley was notified in June 2001 that DeGroot was unhappy with the manure handling system Standley provided and installed. It was only three months later that DeGroot filed suit against Standley for the defective manure handling system, which included a claim for rescission. By focusing on Beltman's actions, Standley conveniently overlooks these facts. Moreover, DeGroot immediately filed its complaint against Beltman following the Court's order granting Standley's first motion for summary judgment—certainly well within the six month period established by Idaho Code § 28-2-725(3). Neither DeGroot nor Beltman has "slept on its rights" or otherwise neglected to "make complaint" against Standley. Accordingly, the doctrine of laches is not applicable and Beltman's rescission claim is not barred.

## CONCLUSION

In sum, Beltman has properly asserted a negligence claim against Beltman for which he can recover even economic losses. Moreover, Beltman's contractual claims against Standley are not barred by either Idaho Code § 5-216 or § 28-2-725. Accordingly, Standley's motion for summary judgment on the third party complaint must be denied.

DATED this 7<sup>th</sup> day of March, 2007.

WHITE PETERSON, P.A.

By:   
Jill S. Holinka  
Attorneys for Plaintiffs

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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**FILED**  
A.M. *[Signature]* P.M.  
**MAR 14 2007**  
CANYON COUNTY CLERK  
T WHITE, DEPUTY

**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 REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT**



COMES NOW Third Party Defendant Standley Trenching, Inc., d/b/a Standley & Co. ("Standley"), in reply to Third Party Plaintiff Beltman Construction, Inc., d/b/a Beltman Welding and Construction's ("Beltman") opposition to Standley's summary judgment motion.

**I.**

**INTRODUCTION**

Beltman's arguments against summary judgment fail for every cause of action. In particular, Beltman presents no dispute to Standley's assertion that Beltman's negligence claim is barred either by the two year statute of limitations for malpractice pursuant to Idaho Code §5-219.4 and/or the four year "catch-all" statute of limitations pursuant to Idaho Code §5-224. Nor does Beltman dispute that its claim of violation under the Idaho Consumer Protection Act is barred by the two year statute of limitations provided by Idaho Code § 48-629. Beltman has specifically failed to carry the burden of the nonmoving party to come forward with sufficient evidence to create a genuine issue of fact or dispute with regard to Standley's assertion that these two causes of action are barred. Summary judgment is properly granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party's case upon which that party bears the burden of proof at trial. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994); *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). On this basis, Beltman's claims of negligence and violation of the Idaho Consumer Protection Act should be dismissed as a matter of law.

Nevertheless, this Reply will address the flawed legal arguments set forth by Beltman related to its claim of negligence. Additionally, this memorandum will respond to Beltman's contradiction

of its own claims that the relationship between Beltman and Standley are governed by the Idaho Uniform Commercial Code (UCC) in order to stretch the statute of limitations on its claims of breach of contract, breach of warranties, and rescission claims; and will dispute that the savings clause of the UCC statute of limitations is applicable in this matter. For these reasons summary judgment is warranted. In addition to which, the actions taken by DeGroot and Beltman related to their Stipulated Judgment and the execution of the Satisfaction of Judgment in this matter render all claims extinguished, requiring summary judgment.

## II.

### ARGUMENT

#### A. All Claims Sounding In Negligence Should Be Dismissed.

As set forth in Standley's Memorandum in Support of Summary Judgment ("Standley's Memorandum"), Beltman's negligence cause of action against Standley should be dismissed on any one of several grounds besides the running of the statute of limitations, namely, (1) construing the facts most favorably toward Beltman, nothing more than negligent performance of contractual obligations can be established by Beltman against Standley, which does not establish a cause of action sounding in negligence; (2) there is no evidence that Standley undertook a duty to perform obligations beyond the contract duties to Beltman, nor is there evidence that Standley was required to perform extra-contractual duties as a matter of law, thus there can be no breach of such duties supporting a claim of negligence; (3) alleging negligent engineering and/or design goes beyond the scope of liability permitted by Idaho Rule of Civil Procedure 14(a) which governs third-party

practice; and (4) Beltman's negligence claims are barred by the economic loss rule. None of Beltman's explanations or arguments save its negligence cause of action.

**(1) *There were no extra-contractual duties assumed by Standley and none were required of Standley as a matter of law.***

There is no dispute that Standley was a subcontractor for Beltman on the DeGroot Dairy project. Both Standley and Stan Beltman testified that the contract consisted of the bid that Standley submitted to Beltman. S.Beltman Depo., pp. 64-65, ll.13 - 6 attached as Ex. "A" to Affd. of Counsel, and Standley Depo., p. 74, ll. 13-23 & p. 124, ll.1-6 attached as Ex "B" to Affd. of Counsel. Stan Beltman also testified that the negligence allegations against Standley in Beltman's First Amended Third-Party Complaint related to Standley's performance of his contractual obligations. S. Beltman Depo., p. 70, ll.11-18 attached as Ex. "A" to Affd. of Counsel. By Beltman's own testimony, there were no extra-contractual duties taken on by Standley.

In an effort to argue that Standley was required to perform extra-contractual duties as a matter of law, Beltman maintains that because the Idaho Court of Appeals in *Hibbler v. Fisher*, 109 Idaho 1007, 712 P.2d 708 (Ct.App.1985), found that the defendant sellers of real property were negligent in the design and construction of a water system – that five or six years after the sale was discovered by the purchasers to be malfunctioning and improperly installed – there exists a common law duty imposed on Standley beyond the duties imposed by his contract with Beltman. Clearly this is a stretch of the holding in *Hibbler* which is based on an entirely different relationship than the one at issue in the instant matter between Standley and Beltman.

Beltman's cause of action for breach of duty on the part of Standley can not be maintained without the contract. All of the allegations against Standley stem from the alleged nonperformance

of the contract. Beltman has failed to establish either a statutory or common law duty irrespective of the contractual duty. Consequently, Beltman's negligence claims should be dismissed as a matter of law.

(2) *Notice Pleading does not broaden the scope of a third-party action.*

Beltman asserts that the system of notice pleading established by the Idaho Rules of Civil Procedure allow it to bring claims beyond those brought by Plaintiffs Charles DeGroot and DeGroot Farms, LLC ("DeGroot"). However, as the Court in *Harris v. Rasmussen*, 106 Idaho 322, 324, 678 P.2d 114, 116 (Ct.App.1984), explained:

The third-party claim cannot simply be an independent or related claim but must be based upon plaintiff's claim against defendant. **The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff.** The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.

*Id.* at 324, 678 P.2d at 116, citing 6 C. WRIGHT and A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1446 at 256-57 (1971) (emphasis added).

As set forth in Standley's Memorandum, DeGroot's negligence cause of action against Beltman asserts that Beltman failed to "construct and maintain" the dairy, but Beltman's third-party complaint adds allegations against Standley for engineering and design functions. Regardless of the notice pleading standard, Beltman's third-party action goes beyond trying to transfer the liability asserted by DeGroot to include claims that are not in the first-party action. As such, Beltman's additional claims of negligence for engineering or design must be dismissed.

(3) *The Standley-Beltman relationship does not rise to the level of the exception to the economic loss rule.*

Beltman recognizes that purely economic losses are not recoverable in a negligence action; however, it maintains that the “special relationship” exception to the economic loss rule applies in this case. Beltman claims that Standley is in the same position as the Idaho Crop Improvement Association (ICIA) in *Duffin v. Idaho Crop Imp. Ass’n.*, 126 Idaho 1002, 895 P.2d 1195 (1995), because Stanley was the regional sales distributor of Houle equipment and it marketed itself as capable of installing the Houle equipment as well as other manure handling systems. However, in *Duffin* the ICIA was the *only* entity that could certify seed potatoes in the State of Idaho and seed that was certified could be sold at a higher price. *Id.* at 1008, 895 P.2d at 1201. The ICIA was also a member organization that marketed its certification to purchasers of seed potatoes to induce reliance on the certification for the benefit of its members. *Id.* In addition, the ICIA was granted responsibility for conducting the certification program by the University of Idaho pursuant to statutory regulations. *Id.* at 1004, 895 P.2d at 1197. The purchasers of seed potatoes in Idaho had to rely on the ICIA certification program if they wanted to purchase certified seed potatoes.

The relationship between Standley and Beltman in the instant matter is hardly as specialized at that of Duffin and the ICIA. Standley was the regional distributor of the type of equipment that DeGroot wanted on his dairy. The relationship was not as much “special” as it was convenient. This convenience does not rise to the level of the exception to the economic loss rule.

Beltman also argues that Standley had specialized expertise that Beltman did not have, therefore, it fell into the category of professionals or quasi-professionals like attorneys, architects, engineers or physicians. Such an argument is not persuasive. If it was then every contract for

services from plumbing to automobile mechanics would fall into the category of “special relationship” because such tradespeople have expertise that is sought out by those who do not possess their knowledge and equipment.

No exception to the economic loss rule applies to the facts of this case; accordingly it bars all claims sounding in negligence.

***(4) The four year statute of limitation applies to this UCC transaction.***

In order to avoid the statute of limitations on its breach of contract, breach of warranties and rescission claims Beltman now asserts that “the UCC does not apply.” Beltman Memo. p.10. Even though Beltman asserted in its First Amended Complaint that Standley was a “seller” within the meaning of the UCC (First Am. 3<sup>rd</sup> Pty. Compl., ¶6), and has argued and emphasized that Standley was responsible for the specifications of the manure handling system and providing the equipment for the system (Beltman Memo. p.8), it now downplays these points in order to stretch out the statute of limitations another year.

Furthermore, the First Amended Third Party Complaint is a repleat with references and specific allegations of UCC violations:

**COUNT TWO**

**Rescission**

(Standley & Houle)

29. Beltman is entitled to revoke its acceptance of the insufficient/defective manure handling equipment provided by defendants pursuant to Idaho Commercial Code § 28-2-608.

30. DeGroot notified Standley on June 18, 2001 that they were revoking acceptance of said manure handling equipment, and demanded a return of the purchase money pursuant to Idaho Code § 28-2-608.

(First Amended Third Party Complaint and Demand for Jury Trial - p. 4).

**COUNT THREE**  
**Breach of Warranties**  
(Standley and Houle)

47. Standley and Houle breached the implied warranty of fitness for a particular purpose pursuant to Idaho Commercial Code § 28-2-315.

48. Standley and Houle breached the implied warranty of merchantability pursuant to Idaho Commercial Code § 28-2-314.

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

(First Amended Third Party Complaint and Demand for Jury Trial - pp. 6-7).

Standley agrees that in hybrid transactions of mixed sales of goods and services, the predominant factor of the transaction governs whether the UCC applies. Beltman claims that the manure handling equipment provided by Standley “was only incidental” to the installation services provided by Standley. This contradicts testimony by Beltman that the deciding factor when hiring Standley was the fact that it was the dealer of Houle equipment. S. Beltman Depo., p.106, ll.5-9 attached as Ex.”A” to Affd. of Counsel. Moreover, the test to determine the predominant factor “involves the consideration of the contract in its entirety, applying the UCC to the entire contract or not at all.” *Fox v. Mountain West Elec., Inc.*, 137 Idaho 703,710, 52 P.3d 848, 855 (2002). Although Idaho appellate courts have not had the opportunity to apply this test since *Fox*, its application in other jurisdictions is instructive. See *Kline Iron & Steel Co. v. Gray Communications Consultants, Inc.*, 715 F.Supp. 135 (D.S.C.1989) (applying the UCC to a transaction involving the construction of a television tower. The contract neither mentioned any services nor quoted a separate price for

them, although some service would necessarily be involved in erecting the television tower); *J. Lee Gregory, Inc. v. Scandinavian House*, 209 Ga.App. 285, 433 S.E.2d 687 (1993) (stating that when a contract for the purchase of replacement windows included a lump sum charge, and approximately two-thirds of that cost was for the windows, even though a substantial amount of service was necessarily involved, the contract was for the sale of goods); *Riffe v. Black*, 548 S.W.2d 175 (Ky.Ct.App.1977) (finding that when a contract for the purchase of a swimming pool included services necessary to ensure the goods were merchantable and fit for the ordinary purpose, the contract was for the sale of goods); *Mennonite Deaconess Home & Hosp., Inc. v. Gates Eng'g Co.*, 219 Neb. 303, 363 N.W.2d 155 (1985) (finding that when a contract was for the purchase of a particular roofing material which was specially manufactured and supplied by seller, the contract was for the sale of goods); *Meyers v. Henderson Constr. Co.*, 147 N.J.Super. 77, 370 A.2d 547 (1977) (contracting for the purchase and installation of prefabricated overhead doors, which included a lump sum charge for the equipment and installation, made it a nondivisible mixed contract, and the contract was for the sale of goods because the service element did not dominate the subject matter, even though the overhead doors were useless without the performance of installation services).

The contract in this matter consisted of Standley's bid submitted to Beltman which is a list of the equipment to be used on the project. Attached as Ex. "C" to Affd of Counsel. On its face, the contract, which is what determines whether the UCC applies, is a list of goods. The UCC clearly applies to the transaction between Standley and Beltman and therefore, the four (4) year statute of limitations applies and bars the breach of contract, breach of warranties and rescission claims brought by Beltman.



Furthermore, it should be noted that Stan Beltman testified that he identified the wrong sized pipe was being installed in 1999. S.Beltman Depo., p.105, ll.5-17, attached as Ex. "A" to Affd of Counsel. This pipe size is a central part of the claims against Standley. Beltman's testimony sets forth the date that the cause of action arose as 1999 which bars the breach of contract, breach of warranties and rescission claims, *see* I. C. § 28-2-725(2), which reads in pertinent part:

A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made . . .

Even if the facts are viewed in light most favorable to the Third Party Plaintiff and the UCC does not apply, the five year statute of limitations for contracts would have expired based on Mr. Beltman's own testimony.

**(5)     *The savings clause on the UCC statute of limitations does not apply.***

Beltman seeks to apply the savings clause of I.C. §28-2-725(3) to avoid the applicable statute of limitations, arguing that because DeGroot filed its action against Standley within the limitation period, then filed another against Beltman within six (6) months of when the Standley action was dismissed, the Beltman action against Standley is saved. This is not an appropriate application of the savings clause. The savings clause clearly states that it applies only to "the same breach" and it is obvious that the action brought by Beltman against Standley does not involve "the same breach" as that alleged by DeGroot in its failed lawsuit. As such, the four (4) year statute of limitations limits Beltman's action against Standley which was filed on March 22, 2005, at least six (6) years after the damage in this matter was identified.

(6) *The Satisfaction of Judgment filed by DeGroot extinguishes all of Beltman's claims against Standley.*

Lastly, the Satisfaction of Judgment filed by DeGroot on its claims against Beltman effectively extinguished any and all third-party claims of Beltman against Standley. Beltman entered into a Stipulated Judgment with DeGroot related to DeGroot's claims against it. DeGroot then filed a Satisfaction of Judgment. Attached as Ex. "D" to Affd of Counsel. "Satisfaction of a judgment, when entered of record by the act of the parties, is prima facie evidence that the creditor has received payment of the amount of the judgment or its equivalent, and operates as an extinguishment of the judgment debt." 47 Am. Jur. 2d *Judgments* §1006.

As discussed in Standley's Memorandum and above, the purpose of a third-party action is to allow the defendant in the first-party action to attempt to transfer its alleged liability to the plaintiff on to the third-party defendant. DeGroot's action of filing a Satisfaction of Judgment eliminated Beltman's liability.

The Satisfaction of Judgment also acts to satisfy any rights assigned by Beltman to DeGroot. The Idaho Supreme Court ruled in *Woods v. Locke et al.*, 49 Idaho 486, 289 P. 610 (1930), that a contract made before a judgment and then ruled on is reduced to the judgment, stating "[w]hen a contract has become merged in a valid judgment, all possibility of its revival is irretrievably lost." *Id.* at 611.

DeGroot's and Beltman's actions of stipulating to a judgment and then filing with the Court a satisfaction of that judgment, reveal that there are no damages in this case. As such, summary judgment is appropriate on all causes of action against Standley.

III.

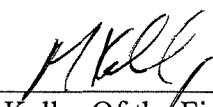
CONCLUSION

Summary judgment should be granted to Standley and the First Amended Third Party Complaint dismissed in its entirety.

DATED this 14 day of March, 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 14 day of March, 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:

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

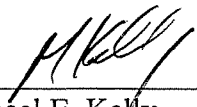
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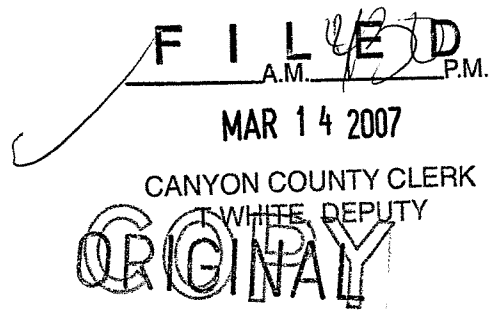
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\_\_\_\_\_  
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Attorneys for Third Party Defendant Standley Trenching, Inc.,  
d/b/a Standley & Co.

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

**AFFIDAVIT OF COUNSEL IN  
SUPPORT OF THIRD PARTY  
DEFENDANT STANDLEY'S REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF IDAHO                    )  
  ).ss  
COUNTY OF ADA                 )

I, Michael Kelly, being first sworn, do hereby depose and state under penalty of perjury:


1. That I am a member of the firm of Lopez & Kelly, PLLC, and one of the attorneys representing Third Party Defendant Standley Trenching, Inc. in regard to the above captioned matter and as such, am familiar with the facts and circumstances of this case and make this affidavit based upon my own personal knowledge;
2. That attached hereto as Exhibit "A" is a true and correct copy of the relevant portions of the deposition transcript of Stanley Beltman, dated December 4, 2006.
3. That attached hereto as Exhibit "B" is a true and correct copy of the relevant portions of the deposition transcript of Kurt Standley, dated January 28, 2004.
4. That attached hereto as Exhibit "C" is a true and correct copy of the bid submitted by Kurt Standley to Stan Beltman related to the DeGroot Dairy.
5. That attached hereto as Exhibit "D" is a true and correct copy of the Satisfaction of Judgment, filed on September 12, 2006.

FURTHER YOUR AFFIANT SAITH NAUGHT.

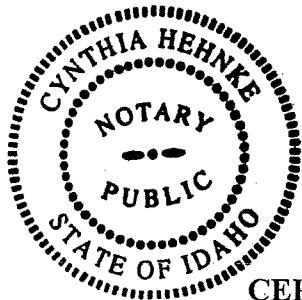
DATED this 14 day of March, 2007.

LOPEZ & KELLY PLLC

By: \_\_\_\_\_

  
Michael E. Kelly, Of the Firm  
Attorneys for Third Party Defendant Standley  
Trenching, Inc., d/b/a Standley & Co.

SUBSCRIBED AND SWORN before me this 14<sup>th</sup> day of March, 2007.



Cynthia Hehne  
Notary Public for Idaho  
Residing in the State of Idaho  
My Commission Expires: B 2/6/10

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14 day of March, 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:

Julie Klein Fischer  
Kevin E. Dinius  
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5700 East Frankly Rd., Ste. 200  
Nampa, ID 83687

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Michael E. Kelly  
Michael E. Kelly

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, )

vs. )

Case No. CV 01-7777

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

corporation, )

Defendant. )

**COPY**

CHARLES DeGROOT, and DeGROOT )

FARMS, LLC, )

Plaintiffs, )

vs. )

BELTMAN CONSTRUCTION, INC., d/b/a )

BELTMAN WELDING AND CONSTRUCTION, )

a Washington corporation, )

Defendant/Third Party Plaintiff, )

DEPOSITION OF STANLEY

vs. )

BELTMAN taken on

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

December 4, 2006

STANDLEY & CO., an Idaho )

corporation, and J. HOULE & FILS, )

REPORTED BY:

INC., )

COLLEEN P. KLINE, CSR

Third Party Defendants. )

No. 345

) Notary Public

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■ SPOKANE, ID  
509-455-1700





1 question, because I believe it characterizes  
2 prior testimony, but you can answer.

3 THE WITNESS: Design and engineer the  
4 free stall buildings, yes. That was left up to  
5 the newer equipment dealer to handle that end of  
6 the dairy.

7 Q. (BY MR. KELLY) Okay. But you weren't  
8 expected to engineer or design the equipment;  
9 were you?

10 A. No, I was not.

11 Q. In paragraph 43 on the next page it  
12 says, "Defendant represented to plaintiffs that  
13 it had the expertise and knowledge to design and  
14 construct such a facility and represented that it  
15 would provide the equipment for the same." Is  
16 that a correct allegation as to that one?

17 MS. BUXTON: I'll object to the form of  
18 the question to the extent it's asking for a  
19 legal conclusion. But the witness can answer as  
20 to his understanding.

21 THE WITNESS: I would say a dairy is a  
22 huge project. You've got to rely on expertise on  
23 a lot of different entities on it.

24 Q. (BY MR. KELLY) So do you believe  
25 Mr. DeGroot relied on you and your expertise and

1 Q. And was that?

2 MS. BUXTON: Again, I'm going to object  
3 to this line of questioning to the extent that  
4 you are asking for the witness to give a legal  
5 conclusion. You can answer.

6 THE WITNESS: By advice of my counsel  
7 at the time.

8 Q. (BY MR. KELLY) Okay. Any other  
9 reason, other than what your counsel told you?

10 A. Nope, that's it.

11 Q. And again, as you sit here today, would  
12 you have a change of heart if you had that  
13 decision to make today?

14 MS. BUXTON: Again, I'll object to the  
15 question to the extent it's asking for a legal  
16 conclusion, or that it's asking for  
17 attorney/client privileged information. You can  
18 answer.

19 THE WITNESS: It depends on what the  
20 choice -- alternative was.

21 Q. (BY MR. KELLY) If your choice was to  
22 be able to just walk away from this thing, would  
23 you have signed off on this stipulated judgment?

24 A. In a heartbeat.

25 Q. You would not have signed off on it --

1 knowledge in designing and constructing the dairy  
2 facility?

3 A. No, he did not. Not on the manure  
4 handling.

5 Q. If you go to page 9, paragraph 56, it  
6 states, "Defendant acted carelessly, recklessly,  
7 and negligently in failing to construct and  
8 maintain the dairy -- the plaintiffs' dairy  
9 facility in a reasonable manner resulting in  
10 numerous defects in or around the dairy  
11 facility."

12 A. I just --

13 Q. Is that allegation true?

14 A. I disagree with that.

15 Q. So you're denying that allegation?

16 A. I'm denying it.

17 Q. Mr. Beltman, I think most of the  
18 allegations I just cited, you either denied or  
19 had a qualified denial on. Now, these were the  
20 allegations made by DeGroot against Beltman?

21 A. Correct.

22 Q. And based on your denials, you still  
23 went ahead and signed off on the stipulated  
24 judgment for almost a million dollars?

25 A. Yeah, I guess so.

1 or you would have walked away in a heartbeat?

2 A. I would have walked away in a  
3 heartbeat.

4 Q. Okay. Pull out Exhibit 18, again. It  
5 should be towards the bottom there. Yeah, there  
6 it is. Now, if you look at page 3 of this  
7 document, again, this is the third-party  
8 complaint then that you filed against Standley  
9 and Houle; correct?

10 A. Correct.

11 Q. Okay. If you look at paragraph 18,  
12 under Count I Breach Of Contract, it states,  
13 "Beltman subcontracted with Standley for the  
14 engineering, designing, and installation of  
15 manure handling equipment at DeGroot's dairy in  
16 Canyon County Idaho." Did I read that correctly?

17 A. Yes.

18 Q. And do you believe that allegation to  
19 be true?

20 A. Yes.

21 Q. And a subcontract that you're talking  
22 about in this paragraph, would that be Exhibit  
23 13, the bid that Standley submitted to Beltman  
24 Construction?

25 A. Yes.

1 Q. Okay. Any other documents that you are  
2 aware of that you rely on, as far as there being  
3 contract between --

4 A. No.

5 Q. -- Beltman and Standley?

6 A. That's it.

7 Q. And if you look at Count Two on page 4,  
8 I think we went through this already in regard to  
9 Mr. DeGroot's complaint, but it discusses that  
10 Mr. DeGroot notified Standley on June 18, 2001,  
11 that they were revoking acceptance of the manure  
12 handling equipment and demanding return of their  
13 money.

14 And in the subsequent paragraph, 31,  
15 states, "Standley has refused to return the  
16 purchase money for the insufficient/defective  
17 manure handling equipment."

18 Do you have any knowledge of DeGroot  
19 requesting Standley to return the money for the  
20 manure handling system?

21 A. No, I do not.

22 Q. And just to clarify, as you testified  
23 earlier, you've never made a demand on Standley  
24 to return money for the manure handling  
25 equipment; correct?

1 Beltman suffered damages in the form of lost  
2 profits, loss opportunity, and other special and  
3 general damages in an exact amount to proven at  
4 trial, in a sum in excess of \$10,000."

5 Now, other than the attorney fees,  
6 that's reflected in your letter, which is Exhibit  
7 19, what types of lost profits and lost  
8 opportunities has Beltman suffered as a result of  
9 Standley's conduct in this matter?

10 MS. BUXTON: I'll object to the extent  
11 that it's asking for the witness to testify with  
12 regard to legal conclusions or legal terminology.  
13 But you can answer if you have an answer.

14 THE WITNESS: As far as the job was  
15 concerned, he's the most frustrating  
16 subcontractor I ever worked with, to date.

17 Q. (BY MR. KELLY) Have you suffered any  
18 damages, money damages?

19 A. He slowed our -- he slowed our  
20 production down a lot on the job.

21 Q. Did you suffer an money damages?

22 A. Yes. Any time you slow production, you  
23 cost money.

24 Q. Did you get paid for --

25 A. No.

1 A. I have not.

2 Q. Now, if you look at page 6, paragraph  
3 45 states, "Standley, having reason to know of  
4 the intended purpose of the manure system and  
5 Beltman's reliance on Standley's skill and  
6 judgment to select and furnish a suitable system,  
7 impliedly warranted that the system would be fit  
8 for the intended purpose." Do you believe that  
9 to be a true allegation?

10 MS. BUXTON: Again, I'll object to the  
11 extent you're asking for the witness to give a  
12 legal conclusion. You can answer, if you have an  
13 opinion.

14 THE WITNESS: That's what he was hired  
15 to do, yes.

16 Q. (BY MR. KELLY) And when you said,  
17 "That's what he was hired to do," that was in the  
18 context of the bid that he submitted to you?

19 A. Correct.

20 Q. And again, reflected by Exhibit 13;  
21 correct?

22 A. Yes.

23 Q. Turn to page 8, the first, paragraph,  
24 paragraph 56, "As a direct and proximate result  
25 of Standley's conduct, as alleged herein above

1 Q. What didn't you get paid for?

2 A. Well, I got paid for the job, but it  
3 took longer to complete, so you get more man  
4 hours that you pay out.

5 Q. And have you calculated out how much  
6 you've lost in that regard?

7 A. No, I have not.

8 Q. Do you intend to?

9 A. Not at this point.

10 Q. On the same page, paragraph 61,  
11 "Standley and Houle's conduct, including without  
12 limitation, representations to Beltman that the  
13 goods and services were of a particular quality  
14 and standard, constituted unfair and deceptive  
15 acts or practices in the conduct of trade and  
16 violated the Idaho Consumer Protection Act, Idaho  
17 Code 48601."

18 Do you have an opinion, Mr. Beltman,  
19 whether as to whether that's an accurate  
20 allegation?

21 MS. BUXTON: I'll renew my objection as  
22 to the extent that you're asking the witness to  
23 give a legal conclusion. You can answer.

24 Q. (BY MR. KELLY) Do you have an opinion  
25 as to what type of a fair market value

1 practices either Standley or Houle engaged in?

2 A. I really can't answer that. I --

3 Q. Let me ask you this: In regard to  
4 Standley's potential conduct, is it all within  
5 the confines or the scope of his contract that --  
6 represented by the bid that he submitted to you?

7 A. Drainpipes.

8 Q. Okay. And that's --

9 A. Size.

0 Q. And that's within the context of the  
1 contract he submitted to you; correct?

2 A. Yes.

3 Q. Okay. He represented one size, and  
4 installed another?

5 A. Yes.

6 Q. Is that accurate? And then if you turn  
7 to page 9, paragraphs 65 and 66, "Standley owed  
8 Beltman a duty of reasonable care in the  
9 engineering, design, and installation of the  
10 manure handling equipment for which Beltman  
11 subcontracted for DeGroot's dairy."

12 And then the following paragraph,  
13 "Standley acted carelessly, recklessly, and  
14 negligently in failing to engineer, design, and  
15 install the manure handling equipment in a

1 reasonable manner, resulting in numerous defects  
2 in the equipment and its operation." Do you  
3 believe those allegations to be true?

4 A. Yes, I do.

5 MS. BUXTON: Again, I'll renew my  
6 objection to extent you're asking for this  
7 witness to testify as to a legal conclusion.

8 MR. KELLY: He beat you to it.

9 MS. BUXTON: He's quicker than I am.

10 THE WITNESS: Okay. Sorry.

11 Q. (BY MR. KELLY) Mr. Beltman, in regard  
12 to this negligence allegation, and then the  
13 paragraphs I just read, to your knowledge -- I  
14 mean, you're alleging that Mr. Standley was  
15 negligent in the performance of his contract  
16 that, again, is represented by this bid that he  
17 submitted to you?

18 A. Yes.

19 Q. I'm not going to ask you to go through  
20 all of these, but I'm going to show you,  
21 Mr. Beltman, Third-Party Plaintiff Beltman  
22 Construction's Responses To Third-Party  
23 Defendant's Standley Interrogatories and Requests  
24 For Production.

25 And these are your discovery responses

1 forwarded to us by the white Peterson firm. And

2 I just want you to take a look at those, and let

3 me know if you've ever seen those before?

4 A. (Witness complying.) Yes, I have.

5 Q. And if you turn to the last page, is  
6 that your signature on the verification page?

7 A. Yes, it is.

8 Q. And on that verification page, your  
9 signature represents that these answers are  
10 correct and complete to your knowledge; correct?

11 A. Yes.

12 Q. Thank you. That's all I have on that.

13 MS. BUXTON: Does that have an exhibit  
14 number?

15 MR. KELLY: This, I'm not making an  
16 exhibit.

17 MR. McCURDY: Did you say you were  
18 done? I'm sorry. You said something.

19 MR. KELLY: No. Actually, give me a  
20 second here, and I'll let you know. Thank you,  
21 Counsel. Actually, no, but...

22 Q. (BY MR. KELLY) Mr. Beltman, during the  
23 course of the deposition, additional documents  
24 were provided to us by your attorney, and I was  
25 wondering if you could kind of walk us through --

1 and I don't have any specific questions in regard  
2 to anything on here as of this moment. But I was  
3 wondering if you could walk us through and tell  
4 us what each of these documents represent. So we  
5 can start on page 1. It's a handwritten  
6 notation. It says: Date, name of business on  
7 top -- credit card; do you see that?

8 A. Yes.

9 Q. What does this document represent?

10 MR. WILKINSON: I'm sorry. Did we mark  
11 this as an exhibit?

12 MR. KELLY: We can. It's going to be  
13 Exhibit 24; is that correct?

14 THE WITNESS: These were for expenses  
15 incurred -- oh, like hiring, you know, to unplug  
16 drainpipes that were plugged up. I think Boise  
17 Crane was for lifting those manure separators on  
18 the wall.

19 MS. BUXTON: But for the record, we  
20 realize that this copy is not wonderful. We  
21 will --

22 THE WITNESS: It's hard to read.

23 MS. BUXTON: -- we will provide  
24 everybody with a better copy. It was faxed to  
25 our office today, so...

1 QUESTIONS BY MR. KELLY:

2 Q. Mr. Beltman, could you keep Exhibit 18  
3 open and turn to page 8, please.

4 A. (Witness complying.)

5 Q. In regard to paragraph 61, I believe  
6 your testimony earlier was that, the goods and  
7 services that constituted unfair and deceptive  
8 acts or practices on behalf of Standley, was the  
9 mis-sizing of the piping; is that accurate? Is  
10 that correct?

11 A. Yes.

12 Q. When did you learn that the, from your  
13 perspective, that the piping was mis-sized?

14 A. When it showed up there.

15 Q. And that would have been in 1999;  
16 correct?

17 A. Yeah.

18 Q. Now, you just testified that you  
19 believe or knew at some point in time that the  
20 installation of the manure handling system at the  
21 DeGroot Dairy was the first one done by Standley;  
22 is that correct?

23 A. Yes.

24 Q. And when did you learn that?

25 A. In reading the documents.

1 Q. Did you know that during the course of  
2 the installation?

3 A. When we met to figure out pricing on  
4 the job, he had told me he was a new dealer.

5 Q. A new dealer for Houle; correct?

6 A. For Houle, he was going to be  
7 the -- because when Chuck requested Houle  
8 equipment, I had to find a dealer, of who deals  
9 it in this area.

10 Q. Okay. When you learned that this would  
11 have been the first installation of Houle  
12 equipment for Mr. Standley, did you express any  
13 concern in that regard to Mr. DeGroot?

14 A. No, I did not.

15 Q. Now, in addition to all these documents  
16 we've looked at today, such as the Settlement  
17 Release Agreement, the Assignment Of Rights, the  
18 Stipulated Judgment, there was also a  
19 Satisfaction Of Judgment filed on your behalf; is  
20 that correct? Are you aware of that?

21 A. Yeah, I think.

22 Q. And so as far as you know, has Beltman  
23 Construction, other than the 15,000-plus in  
24 attorney fees we discussed earlier, are they ou  
25 any money at this stage of the game?

1 MS. BUXTON: I'm going to object to the  
2 question. It's been asked and answered.

3 THE WITNESS: He cost us on the job, I  
4 feel, but I'm not pursuing anything.

5 Q. (BY MR. KELLY) Okay. Other than that,  
6 which we discussed earlier, Beltman Construction  
7 is not out any damages -- any money at all;  
8 correct?

9 A. No.

10 MR. KELLY: That's all I have. Thanks.

11 FURTHER EXAMINATION

12 QUESTIONS BY MR. McCURDY:

13 Q. Mr. Beltman, just a moment ago you told  
14 us when Mr. DeGroot told you that he wanted Houle  
15 equipment, you had to seek out the Houle dealer.  
16 But then earlier today, you told us that when you  
17 found Mr. Standley, had already been involved in  
18 putting this bid together at Mr. DeGroot's  
19 request for ISOM to you?

20 A. Yeah, he did.

21 Q. Now, didn't Mr. DeGroot know who the  
22 Standley dealer -- or the Houle dealer was?

23 A. Yeah, he did.

24 Q. So when you say, "seek him out," you  
25 meant just call the number that DeGroot gave you?

1 I don't understand what you meant, you had to  
2 find him?

3 A. Well, when you are a dealer of dairy  
4 equipment, you are given a certain, specific area  
5 that's your area. And he was the dealer. Not  
6 only by Mr. DeGroot, but he had an ad in one of  
7 the dairy magazines -- or Houle did, with naming  
8 their dealers.

9 Q. Okay. But Standley was already  
10 involved in the project by the time that you  
11 first talked to him; correct?

12 A. Well, he had bid it already.

13 Q. Yeah.

14 MR. McCURDY: I'm done. Thanks.

15 MR. KELLY: Do you have anything else?

16 FURTHER EXAMINATION

17 QUESTIONS BY MR. KELLY:

18 Q. I have just one quick question.

19 A. Okay.

20 Q. Do you intend to appear at the trial?

21 A. If I'm asked to.

22 MR. McCURDY: We are asking you to.

23 MR. KELLY: Okay. Thanks.

24 MR. McCURDY: I would like the witness  
25 to read and sign the deposition. Okay. And in

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

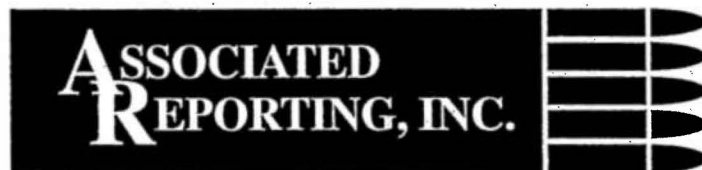
DEPOSITION OF KURT STANDLEY

January 28, 2004

Nampa, Idaho

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

**COPY**



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



Page 72

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.

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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.

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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,

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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?

17 (Pages 72 to 75)

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Q. During the time that you are going through the bidding and ultimately starting to work on this project, from your perspective, was your contract with Stan Beltman, or Beltman Construction, or Chuck DeGroot?

A. Beltman.

Q. Okay. Did you, during this time period that you are bidding the project and working on it -- and you understood that it was Chuck's dairy; right? I mean, it wasn't Beltman's dairy?

A. Sure.

Q. And you knew that Chuck would ultimately put his cows on there and operate that dairy with your system?

A. Correct.

Q. Have you since, at any point, talked to Stan Beltman about this project or the lawsuit?

A. I have not.

Q. When Mr. Beltman asked you to give the bid, ultimately says, "You guys are going to get the job to do what you had bid," what did you view as the purpose of the work you were doing?

MR. KELLY: Object to the form.

Q. (BY MR. DINIUS) You can answer it.

A. What did I view? I viewed it as we were

Q. You don't keep any on hand?

A. You never know when you are going to get a job.

Q. Sure. Had you done any installations of Houle equipment as a Houle distributor prior to undertaking Chuck's project?

A. I have.

Q. Tell me what projects those were.

A. I did a deal for a guy in California, Hanford, California, a separator and a pump. And I did Roadas, who are in Middleton, a separator and pumps and tanks. I probably, if I had my records, I could -- there is probably more pump installs out there. And you are talking -- if I understand the question right -- by the time we installed Chuck's, had I installed or sold other Houle equipment?

Q. Right.

A. And I'm sure, I have. I couldn't -- those two are separator jobs, and I think you are more pointedly asking about that. But we have done some pump installs, I would think in '99, but I can't remember.

Q. How many jobs prior to the DeGroot Dairy project were you responsible for picking the correct size pipe and the pump on a flush system on the supply

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going to do backhoe work for flush pipe and drains, and supply the manure equipment.

Q. Did you also view that part of your role was picking the correct size pipe for the flush system?

A. I would say so, yes.

Q. Okay. The same question with respect to -- I mean, your role was to pick the correct size pump to deliver adequate water to flush the alleys?

A. I would think so.

Q. And you also picked the size of the drainpipe; didn't you?

A. At least in my bid, yeah.

Q. Okay. You indicated that -- I think you did, and I'm not trying to put words in your mouth. You bid the 18-inch drainpipe. From everything I've seen, it looks like 15 inch got installed. You indicated that you think maybe somebody told you to put the 15 in, but you don't remember who, or when, or anything like that.

At that point in time, did you have a stock pipe of 15-inch pipe sitting in your yard, or your warehouse, or wherever?

A. No.

Q. Do you order this pipe as you need it?

A. As per job.

side?

A. Two that I can think of offhand.

Q. What would those two be?

A. Van Beek dairy in Jerome, and Pete DeGroot in Kuna.

Q. Okay. Any problems with either of those systems?

MR. KELLY: Object to form.

THE WITNESS: Pete DeGroot had to change his flush valves. I had bought those flush valves off of a company in Jerome, and I changed those to Houle flush valves. That's about the only problem I can think of.

Q. (BY MR. DINIUS) Okay. Going back to, you know, we talked earlier this morning about your goal of 2,500 gallons per minute to flush the alleys at the DeGroot Dairy. When you are arriving at that goal, do you take into consideration at all, the amount of cows that are going to be in the free stalls, or do you just assume that this thousand foot free stall is going to be full, and that's a thousand cows?

A. Yeah, I assume the barns will be full.

Q. Do you, at the point in time that you were bidding and working on the project, did you have any idea how many cows DeGroot's were permitted for?

Bid : Stan Beltman  
De Groot Dairy

PVC Pipe :

Drains : 1500' 18" 100# P.I.P.

3 90° 100# P.I.P.

OVERS. 11 Put in 2 11 T's 100# P.I.P.

1839 Flush : 2800' 12" 125# P.I.P.

+16 +14 +4 16 90° 125# P.I.P.

12 +5 16 T's 125# P.I.P.

40 + 240 1500 15" 125# P.I.P.

75 1 90° 125# P.I.P.

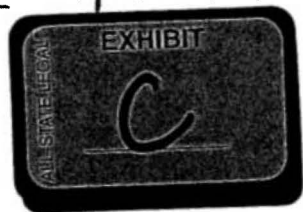
1 T 125 P.I.P.

100 - 6" Water : 3200' 4" Sch 40

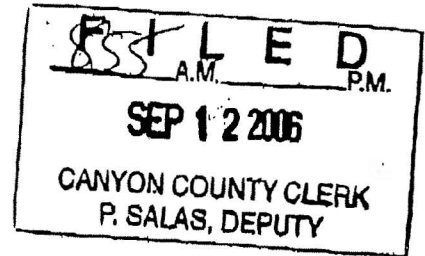
960' 4" 992' 3000 2" Sch 40

180' 3/4 200' 3/4 250 1" Sch 40

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







Julie Klein Fischer  
Kevin E. Dinius  
John R. Kormanik  
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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  
DAIRY, LLC,

Plaintiffs,

-vs-

BELTMAN CONSTRUCTION, INC., d/b/a  
BELTMAN WELDING AND  
CONSTRUCTION, a Washington  
corporation;

Defendant.

CASE NO. CV05-2277.

SATISFACTION OF JUDGMENT



For and in consideration of the execution of the Assignment of Cause of Action by Defendant  
Beltman Construction, Inc., SATISFACTION IS HEREBY ACKNOWLEDGED of the  
SATISFACTION OF JUDGMENT - 1

ORIGINAL

Judgment entered in the above-entitled action on the 27<sup>th</sup> day of April, 2006; and the Clerk of the above-entitled Court is hereby authorized to enter satisfaction of record of said Judgment.

DATED this 11<sup>th</sup> day of September, 2006.

WHITE PETERSON, P.A.

By: [Signature]  
Kevin E. Dinius, for the Firm  
Attorneys for Plaintiff

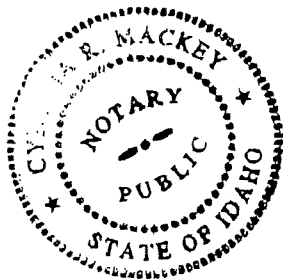
STATE OF IDAHO     )  
                                  ) ss.  
County of Canyon     )

Kevin E. Dinius, being first duly sworn, deposes and says:

That he is one of the attorneys of record for the above-named Plaintiff; that he has read the within and foregoing SATISFACTION OF JUDGMENT, knows the contents thereof, and believes the facts therein stated to be true and correct.

[Signature]  
Kevin E. Dinius

SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of September, 2006.

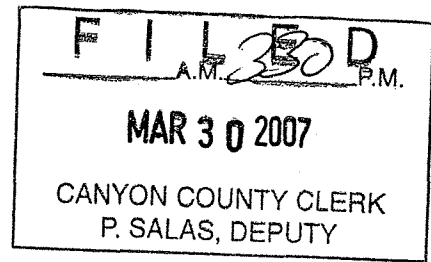


[Signature]  
Notary Public for Idaho  
My Commission Expires: 7/2/07

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SATISFACTION OF JUDGMENT - 2

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MSJ2 Supp Brf.07.Aff.wpd



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

**AFFIDAVIT OF COUNSEL IN  
SUPPORT OF SUPPLEMENTAL  
BRIEF IN SUPPORT OF THIRD-  
PARTY DEFENDANT STANDLEY'S  
MOTION FOR SUMMARY  
JUDGMENT**

STATE OF IDAHO                    )  
  .ss  
COUNTY OF ADA                    )

I, Michael Kelly, being first sworn, do hereby depose and state under penalty of perjury:

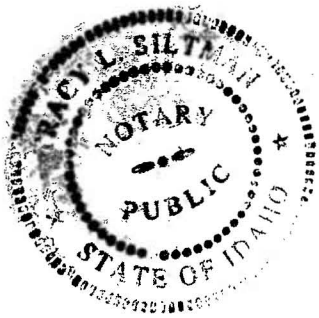
1. That I am a member of the firm of Lopez & Kelly, PLLC, and one of the attorneys representing Third Party Defendant Standley Trenching, Inc. in regard to the above captioned matter and as such, am familiar with the facts and circumstances of this case and make this affidavit based upon my own personal knowledge;
2. That attached hereto as Exhibit "A" is a true and correct copy of the relevant portions of the deposition transcript of Ernest DeGroot, dated November 12, 2003.

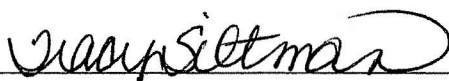
FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 30 day of March, 2007.

  
\_\_\_\_\_  
Michael E. Kelly

SUBSCRIBED AND SWORN before me this 30 day of March, 2007.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing in the State of Idaho  
My Commission Expires: 10/10/08

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30 day of March, 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:

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

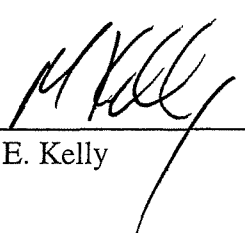
☐ U.S. Mail  
☒ Hand-Delivered  
☐ Overnight mail  
☐ Facsimile

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

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

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

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☐ Hand-Delivered  
☐ Overnight mail  
☐ Facsimile

  
\_\_\_\_\_  
Michael E. Kelly

# **EXHIBIT A**

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

CHARLES DeGROOT, and DeGROOT )	
FARMS, LLC, )	
Plaintiffs, )	
vs. )	Case No. CV 2001-777
KURT STANDLEY, STANDLEY )	DEPOSITION OF:
TRENCHING, INC., d/b/a )	ERNEST DeGROOT
STANDLEY & CO., and J. HOULE )	November 12, 2003
& FILS, INC., a Canadian )	
corporation, )	
Defendant. )	
<hr/>	
STANDLEY TRENCHING, INC., )	
d/b/a STANDLEY & CO., )	
Counterclaimant, )	
vs. )	
CHARLES DeGROOT, and DeGROOT )	
FARMS, LLC, )	
Counterdefendants. )	

REPORTED BY:

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

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 and keep solids out 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 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 there -- 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



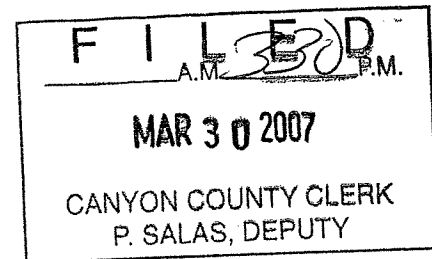
1 questions.  
 2 A. Okay.  
 3 Q. You testified earlier that the day following  
 4 the equipment becoming operational there was a problem  
 5 with the stacker backing up and you had a call in to  
 6 Standley to come fix it. Do you recall that testimony?  
 7 A. Yes.  
 8 Q. Do you recall how long 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 you had looked into 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 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

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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

**SUPPLEMENTAL BRIEF IN  
SUPPORT OF THIRD-PARTY  
DEFENDANT STANDLEY'S  
MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW Third Party Defendant Standley Trenching, Inc., d/b/a Standley & Co. (“Standley”), and in response to the Court’s request respectfully submits this brief of legal authority and argument supporting the fact that Third Party Plaintiff Beltman Construction, Inc., d/b/a Beltman Welding and Construction’s (“Beltman”) action falls within the Uniform Commercial Code (UCC); and that the savings clause set forth in Idaho Code §28-2-725(3) does not apply to the Beltman action. Based on the following points of authority and argument, Standley is entitled to summary judgment as a matter of law, there being no genuine issues of material fact remaining.

## **I.**

### **UNDISPUTED FACTS**

Although many of the following facts have been set forth in previous briefs, they are repeated here for the Court’s convenience and ease of analysis.

1. The general averments in Beltman’s First Amended Third Party Complaint sequentially set out the necessary elements to support its counts under the UCC as follows:

5. Standley, under the assumed business name of Standley & Co., offers services and sells manure handling equipment for dairy operations throughout Idaho, including Canyon County, Idaho.
6. Standley is a “Seller” within the meaning of Idaho Commercial Code § 28-2-103.
9. The equipment and products sold by Standley to Beltman are “goods” within the meaning of the Idaho Commercial Code §§ 28-2-105 and/or 28-2-107.
10. Beltman is a “Buyer” within the meaning of the Idaho Commercial Code § 28-2-103.
15. The manure handling equipment installed at DeGroot’s dairy by Standley is inadequate, does not function as intended, and is not fit for its intended use.

First Amended Third Party Complaint and Demand for Jury Trial, pp.2-3.

2. Beltman's Complaint also includes the following specific allegations setting forth alleged violations of the UCC:

**COUNT TWO**

**Rescission**

(Standley & Houle)

- 29. Beltman is entitled to revoke its acceptance of the insufficient/defective manure handling equipment provided by defendants pursuant to Idaho Commercial Code § 28-2-608.
- 30. DeGroot notified Standley on June 18, 2001 that they were revoking acceptance of said manure handling equipment, and demanded a return of the purchase money pursuant to Idaho Code § 28-2-608.

First Amended Third Party Complaint and Demand for Jury Trial, p. 4.

**COUNT THREE**

**Breach of Warranties**

(Standley and Houle)

- 47. Standley and Houle breached the implied warranty of fitness for a particular purpose pursuant to Idaho Commercial Code § 28-2-315.
- 48. Standley and Houle breached the implied warranty of merchantability pursuant to Idaho Commercial Code § 28-2-314.
- 49. Standley, by representing that its products and services would be sufficient to handle manure disposal for a 2,000 head dairy operation, breached the warranty of affirmation or promise pursuant to Idaho Commercial Code § 28-2-313.

First Amended Third Party Complaint and Demand for Jury Trial, pp. 6-7.

3. Standley was hired by Beltman for the DeGroot Dairy project because he was the dealer of Houle equipment in the area. Stan Beltman testified as follows:

A. When we met to figure out pricing on the job, he (Kurt Standley) had told me he was a new dealer.

Q. A new dealer for Houle; correct?

A. For Houle, he was going to be the – because when Chuck [DeGroot] requested Houle equipment, I had to find a dealer, of who deals it in this area.

S. Beltman Depo., p.106, ll.5-9 attached as Ex."A" to Kelly Aff'd in Support of Reply.

4. Ernest DeGroot also testified as follows that the manure handling system was chosen after seeing it at a trade show:

Q. Do you know how the decision was made to install this particular manure handling system on the DeGroot Dairy?

A. My dad (Chuck DeGroot), he would go to different trade shows, talk to different vendors there.

Q. So he saw this manure handling system at a trade show and made the decision that was the system he wanted on this dairy?

A. Well, after talking to them and –

...

Q. You testified that your father had seen the system that was installed at the Idaho dairy at a trade show and decided that's what he wanted after talking to the people there; is that correct?

A. Yes.

Q. That was a different trade show from the one you attended in Idaho when you talked to Kurt Standley; is that correct?

A. Yes.

Q. Do you recall or do you know when your father went to this trade show? Where it was?

A. It was Tulare Farm Show World Ag Expo.

Q. Do you know whose booth it was that Charlie [DeGroot] saw the system that he wanted?

A. No.

E. DeGroot Depo., p. 67, ll.9-17 & p. 116, ll.8-22, attached as Ex. "A" to Aff'd of Counsel.

5. Standley's bid, which is the contract between Beltman and Standley, totals \$233,604.80, of which \$174,004.80 is the bid for equipment and \$59,600.00 is the bid for construction which translates to 74.5% of the total contract was for equipment. *See Ex."C"* attached to Kelly Aff'd in Support of Reply.

## II.

### ARGUMENT

A. **The Contract Between Beltman and Standley Was For the Sale of Goods and is Governed By the UCC.**

Whether a transaction is a goods or services transaction can be decided by the court when the evidence so clearly indicates undisputed facts that no jury issue remains to be resolved. *See United States v. City of Twin Falls*, 806 F.2d 862, 870 (9<sup>th</sup> Cir.1986). Beltman, in order to stretch the statute of limitations period by one year, argues that the contract between Standley and Beltman is a services

contract and not within the scope of the UCC. Standley maintains that the undisputed facts demonstrate that the predominant thrust of the contract and the predominant thrust of Beltman's Third Party Complaint is the sale of goods, and thus, the UCC applies to the transaction.

The Idaho UCC defines "goods" as "all things (including specially manufactured goods) which are moveable at the time of the identification to the contract for sale ... ." I.C. §28-2-105(1). There can be no dispute that the lists of pipe and "manure equipment" proposed by Standley in his bid to Beltman are "goods" as defined by the Idaho UCC.

Standley's bid also includes the following paragraph related to the construction aspect of his bid:

Construction

This price involves the work to bury all the water line outside the parlor area. It also included [sic] all flush pipe, drain pipe, air lines and electrical conduit to be buried. This price includes all work to set flush valves in and around freestalls, hook up air lines to valves from controller, pull electrical wire to controllers, and make flush system operational. All electrical lines and are lines will be in conduit.

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

Ex."C" attached to Kelly Aff'd in Support of Reply.

Obviously, the contract in this case also involved installation of the goods making it a "hybrid transaction" involving both goods and services. The Idaho Court of Appeals first took up this issue in *Pittsley v. Houser*, 125 Idaho 820, 875 P.2d 232 (Ct.App.1994), a case involving the installation of carpet. The Court considered two lines of authority for dealing with hybrid transactions, the "predominant factor" test adopted by the Ninth Circuit in *United States v. City of Twin Falls*, supra and severing the contract into different parts, applying the UCC to the goods but not to the services as adopted by the Tenth Circuit in *Foster v. Colorado Radio Corp.*, 381 F.2d 222 (10<sup>th</sup> Cir.1967).

The *Pittsley* court followed the “predominant factor” test, also referred to as the *Bonebrake* test, as adopted by the Ninth Circuit *Twin Falls* case:

The test for inclusion or exclusion is not whether they are mixed, but, granting that they are mixed, whether their predominant factor, their thrust, their purpose, reasonably stated, is the rendition of service, with goods incidentally involved (e.g., contract with artist for painting) or is a transaction of sale, with labor incidentally involved (e.g., installation of a water heater in a bathroom).

*Pittsley* 125 Idaho at 822, 875 P.2d at 234, citing *United States v. City of Twin Falls*, Idaho, 806 F.2d at 871, citing *Bonebrake v. Cox*, 499 F.2d 951 (8th Cir.1974). Subsequent Idaho cases have likewise followed the predominant factor test and are discussed below.

Analysis of the line of cases and application to the facts in the instant matter leads only to the conclusion that the contract for the manure handling system on the DeGroot Dairy was one for goods, and therefore governed by the UCC. In the *Pittsley* case, the contract between the parties called for carpet to be installed at a price of \$4,319.50. *Pittsley* at 823, 875 P.2d at 235. Of that amount, \$700.00 was paid to the installers. The Court found:

It appears that Pittsley entered into this contract for the purpose of obtaining carpet of a certain quality and color. It does not appear that the installation, either who would provide it or the nature of the work, was a factor in inducing Pittsley to choose Hilton as the carpet supplier. On these facts, we conclude that the sale of the carpet was the predominant factor in the contract, with the installation being merely incidental to the purchase.

*Id.*

The same is true for the purpose of the contract between Beltman and Standley. The *Pittsley* court considered the price ratio of goods to services; in the *Pittsley* case the goods comprised about 80% of the total contract price, the goods in the Standley-Beltman contract total 74.5% of the total price bid. The *Pittsley* court also considered that the plaintiff chose the specific carpet to be installed. As set forth above, Beltman hired Standley because he was the dealer of Houle equipment and Chuck DeGroot wanted the manure handling system with Houle equipment. As in *Pittsley*,

installation of the chosen product was part of the deal struck between the parties. In *Pittsley* the plaintiff expected the dealer of the carpet she wanted to have the necessary expertise to install the carpet to her satisfaction. In the instant matter Beltman expected that Standley, as the dealer of Houle equipment, had the expertise to install the manure handling equipment. This expectation of acceptable installation did not, in the *Pittsley* case, outweigh the fact that the contract was predominantly for goods and it does not do so in the case at bar either.

The *Pittsley* court relied in part on the analysis by the Ninth Circuit in *United States v. City of Twin Falls*, supra. In that case, the City contracted with Envirotech to purchase and install equipment which would separate and dispose of sludge produced in the secondary treatment of waste water. Envirotech was a company that manufactured and sold pollution control equipment. The Court recognized that “[s]ome of the contract documents refer to ‘construction’ and ‘contractors.’” On the other hand, other contract documents and documents prepared by Envirotech indicate the contract was for goods.” *Id.* 806 F.3d at 871. The court identified that the goods – piping, high pressure pumps, sludge grinders, heat exchangers, reactor, boiler, vacuum filters and support equipment – were all moveable goods under Idaho Code §28-2-105(1). *Id.* It applied the *Bonebrake* or predominant factor test cited above and found that “the predominant factor, thrust and purpose of the contract with Envirotech was for the sale of goods, with a necessary, non-divisible, but incidental services component.” *Twin Falls* at 871.

Like the equipment in the *Twin Falls* case, the equipment listed on the Standley bid – piping, pumps, valves, electrical solenoids, conduit, dry fiber stacker – are also moveable goods under the Idaho UCC, §28-2-105(1). Envirotech was hired by the City of Twin Falls to supply and install the secondary treatment equipment for the sewage treatment plant (806 F.2d at 865), and Standley was hired by Beltman to supply and install the Houle equipment and manure handling system for the



DeGroot Dairy. An important point made by the *Twin Falls* court was that the installation of the system by Envirotech was a “necessary, non-divisible, but incidental service component.” *Id.* at 871. The same is true for the manure handling system. Installation was a necessary component of the contract with Beltman but it was incidental to the sale of the Houle equipment that DeGroot wanted. Again, the case law and the facts demonstrate that the purpose and thrust of the Beltman-Standley contract was for the sale of goods with installation an incidental element.

The seminal case guiding whether goods or services predominate in a particular transaction is *Bonebraker v. Cox*, supra, which involved the sale and installation of bowling equipment in the defendants’ bowling alley. The defendants maintained that they had a “construction contract” with the seller, thus it was outside the UCC. First, the court determined that the items at issue were “goods” as defined by the UCC, in that they were “moveable, tangible property, normally in the flow of commerce, portable at the time of contract.” *Bonebraker*, 499 F.2d at 958-959. The court went on to explain:

They are not the less ‘goods’ within the definition of the act because service may play a role in their ultimate use. ... ‘Services always play an important role in the use of goods, whether it is the service of transforming the raw materials into some useable product or the service of distributing the usable product to a point where it can easily be obtained by the consumer. ... In short, the fact that the contract involved substantial amounts of labor does not remove it from inclusion under the [UCC].

*Id.*, citing R. Nordstrom, Handbook of the Law of Sales 40, 44 (1970) (emphasis added). Ultimately, the court reached the conclusion that the contract dealt predominantly with goods, even though the amount of services involved was substantial. *Id.* at 960.

Just as in *Bonebrake*, the contract between Standley and Beltman included a labor or construction component and as the *Bonebrake* court explained, such service played an important role in transforming the equipment, such as the pipes, pumps, Houle products, etc., into the manure

handling system for the dairy. However, the construction did not transform the contract from a sale of goods to a service contract.

Contrast the aforementioned cases and the Beltman-Standley contract with *Ward v. PureGro*, 128 Idaho 366, 913 P.2d 582 (1996), a case applying the predominant factor test as set forth in *United States v. City of Twin Falls*, supra. Ward was a farmer who entered into a fertilizer application contract with PureGro to corrugate his sugar beet fields and then inject fertilizer into the resulting seed beds. The Court, without analysis, found that the predominant purpose of the fertilizer application contract was for the provision of services and therefore outside the scope of the UCC. The clear distinction of the *Ward* facts with the facts of the Beltman-Standley contract is the specialized service sought out by Ward and agreed to by PureGro. The fertilizer, or the “goods” at issue were only an incidental part of the total agreement to first corrugate the fields, which is a service, followed by the application of the fertilizer, which is primarily a service function.

Likewise, the most recent Idaho case applying the predominant factor test, *Fox v. Mountain West Electric, Inc.*, 137 Idaho 703, 52 P.3d 848 (2002), found that a contract between two entities that teamed together to bid on a comprehensive fire alarm system in Lockheed Martin Idaho Technical Company’s buildings was a services contract as opposed to a contract for the sale of goods. Fox, who was in the business of designing, drafting, testing and assisting in the installation of fire alarm systems, and in ordering the necessary specialty equipment, agreed to work under Mountain West Electric (MWE) which was in the business of installing electrical wiring, conduit and related hookups and attachments, on the project. *Id.* at 706, 52 P.3d at 851. After the work was underway, a dispute arose between Fox and MWE over compensation for change orders. Fox argued that the contract was for the sale of goods because the predominant factor of the transaction was the fire alarm system, not how the system was installed. *Id.* at 709, 52 P.3d at 854. MWE thought the

UCC should not be applied because the predominant factor at issue was the value of Fox's services under the change orders and not the fire alarm system. *Id.* The Court looked at the entire transaction to determine which aspect predominated. It took note of the *Pittsley* court's opinion that in that case the buyer was more concerned with the goods than with the installation and it considered that the two entities, Fox and MWE, teamed together because of their differing expertise. *Id.* at 710, 52 P.3d at 855. It also considered the fact that Fox left the job after delivering the last of the equipment and MWE had to find replacement *services* to complete the job. *Id.* As a result, the court found that Fox's services, not the goods provided by Fox were the predominant factor.

These facts are also easily distinguished from the facts of the present contract and dispute. Standley was hired because he was the dealer of Houle equipment. The Standley-Beltman contract is primarily for the sale of equipment. The dispute is over the alleged failure of the equipment and the installation of the wrong sized pipe, which are both issues with the goods as opposed to issues with the construction or installation of the manure handling system. Further evidence that the instant matter is one for the sale of goods is the fact that it is the equipment that Standley sold and installed that was allegedly rejected and replaced compared to the Fox services that had to be replaced by MWE to complete the job.

By looking at the entire transaction, it is clear that the UCC applies to the Beltman-Standley contract as the predominant aspect of the transaction was for the sale of goods and not the sale of services.

**B. The Savings Clause of the Four-Year UCC Statute of Limitations Does Not Apply to Beltman's Action Against Standley.**

Beltman asserts that if the UCC governs the sales contract with Standley, it is saved by the savings clause of Idaho Code § 28-2-275, the applicable statute of limitations in contracts for sale, which states:

(1) An action for breach of any contract for sale **must be commenced within four (4) years after the cause of action has accrued**. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) **is so terminated as to leave available a remedy by another action for the same breach** such other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

I.C. § 28-2-725 (emphasis added).

There is no dispute that the Beltman third-party action against Standley pertains to an alleged breach of the contract between Beltman and Standley. There is also no dispute that the cause of action accrued no later than April 2000, when the manure handling system was first put into use and failed to operate to the satisfactorily.<sup>1</sup> Beltman's first and only action brought against Standley was in the form of a third-party complaint which was filed on May 11, 2005, a year and one month after the running of the statute of limitations. Beltman claims that its third-party complaint is "saved" by I.C. §28-2-725(3) because its Complaint against Standley was filed within 6 months of the dismissal of the action filed by Charles DeGroot and DeGroot Dairy, LLC ("DeGroot"), against Standley on March 18, 2005. Beltman is thereby asserting that its third-party action against Standley is "another action for the same breach" of contract alleged by DeGroot.

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<sup>1</sup> Undisputed evidence in the form of testimony from Stan Beltman shows that, in fact, the cause of action arose in April 1999 when he identified that the wrong size pipe was delivered and being installed. See S.Beltman Depo., p.105, ll.5-17, attached as Ex. "A" to Kelly Aff'd in Support of Reply.

The Court need not look outside the language of this statute to resolve this case. Where the language of a statute is clear and unambiguous, statutory construction is unnecessary, and the Court need only determine the application of the words to the facts of the case at hand. *Hamilton v. Reeder Flying Serv.*, 135 Idaho 568, 571, 21 P.3d 890, 893 (2001). “A statute is ambiguous where the language is capable of more than one construction.” *Struhs v. Protection Techs. Inc.*, 133 Idaho 715, 718, 992 P.2d 164, 167 (1999). “Ambiguity is not established merely because differing interpretations are presented to a court; otherwise, all statutes subject to litigation would be considered ambiguous.” *Hamilton*, 135 Idaho at 571, 21 P.3d at 893. “The interpretation should begin with an examination of the literal words of the statute, and this language should be given its plain, obvious, and rational meaning.” *Williamson v. City of McCall (In re Williamson)*, 135 Idaho 452, 455, 19 P.3d 766, 769 (2001).

Idaho Code Section 28-2-725(3) plainly sets forth that it is applicable to actions for breach of contract. The operative language for purposes of this case is “another action for the same breach” (emphasis added). There is absolutely no dispute that no contract existed between DeGroot and Standley. It stands to reason that without a contract, there can be no breach and without a first breach, there simply cannot be “another action for the same breach.” On the basis of the plain reading of the statute, Beltman’s first and only action against Standley for breach of contract is not saved by the separate and distinct action filed by DeGroot against Standley which was dismissed since there was no contract between DeGroot and Standley.

Idaho appellate courts have not interpreted the savings clause of Idaho Code §28-2-725; however; the Wyoming Supreme Court in *MGTC, Inc. v. Northern Utilities Inc.*, 733 P.2d 607 (Wyo.1987), considered whether its UCC savings clause would allow the plaintiff to bring a second

action against different entities than the first action which the court dismissed.<sup>2</sup> In that case, the plaintiff, MGTC filed suit for breach of a sales contract against K-N Energy, Inc. The contract at issue was originally entered into by MGTC with Northern Utilities, Inc., which assigned the contract to Northern Gas Company. Subsequently, all of the shares of stock in Northern Utilities and Northern Gas were acquired by K-N Energy. MGTC filed suit only against K-N Energy alleging that it and its subsidiaries were alter egos, and therefore, K-N Energy had breached the contract. The district court ruled in favor of MGTC but on appeal the 10<sup>th</sup> Circuit reversed in favor of K-N Energy. MGTC then filed another suit against Northern Gas and Northern Utilities. The second suit was filed within six months of the 10<sup>th</sup> Circuit's ruling in favor of K-N Energy but after the four year statute of limitations had run. The defendants moved to dismiss on the basis that the suit was barred and the district court granted the defendants' motion. On appeal, MGTC argued that it was saved by virtue of the UCC savings clause.

The Wyoming Supreme Court upheld the district court holding that there was not a sufficient identity of parties for MGTC to prevail. The Court stated:

In determining whether the savings clause is applicable, it is generally recognized that there must be a substantial identity of parties between the original action and the subsequent action.

*Id.* at 609 citing 51 Am.Jur.2d Limitation of Actions § 318, pp. 820-821 (1970) (“As a general rule a statute permitting commencement of a new action within a specified time after failure of a prior action other than on the merits is not applicable where the parties in the new action are not the same as the ones as in the prior action. ... And a saving statute does not apply when the new action is brought against a different defendant than was the first one, or by a different plaintiff..”); *and see*

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<sup>2</sup>Wyoming's version of the UCC statute governing Statutes of Limitations in contracts for sale is identical to Idaho Code §28-2-725.

*Dunn v. Kelly*, 675 P.2d 571, 572 (Utah 1983) (holding that to invoke the savings statute, the party bringing the subsequent saved action must have been a “party to the original lawsuit who had affirmatively sought relief therein.”).

Moreover, Beltman and Standley had a contractual relationship in which Standley agreed to supply and install the manure handling equipment. If Standley did not perform pursuant to the contract, a breach of contract action accrued either upon delivery of the wrong equipment in April 1999, or when the system did not function satisfactorily in April 2000. Beltman had a direct legal cause of action against Standley then. Rather than proceeding on its legal claim when it was ripe, Beltman delayed over five years. Beltman’s attempt to stretch the statute of limitations goes against the intent of the UCC and specifically against the intent of Idaho Code §28-2-725:

The absolute language of I.C. § 28-2-725 indicates a legislative intent that all actions based on breach of contract for the sale of goods be brought, if at all, within four years of the delivery of the goods. This interpretation is further supported by the statutory provision prohibiting the parties from extending the limitation period by agreement. I.C. § 28-2-725(1). The statute was apparently intended to afford ultimate repose in transactions for the sale of goods.

*Farmers Nat. Bank v. Wickham Pipeline*, 114 Idaho 565, 570, 759 P.2d 71, 76 (1988).

Application of the savings clause to Beltman’s cause of action would contradict the legislature’s specific limitation in cases involving the sale of goods by extending beyond four years the time in which an action may brought when the defendant is sued by other parties and the aggrieved party sits back and watches. Accordingly, the four year statute of limitations applies to Beltman’s action and it is not saved by the separate DeGroot action.

### III.

### CONCLUSION

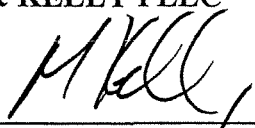
Based on the foregoing, the remaining Beltman claims should be dismissed as there is no genuine issue of material fact regarding the applicability of the UCC to the Beltman-Standley

contract for the sale of goods and the savings clause does not apply to Beltman. Consequently, its action against Standley is barred by the four year UCC statute of limitations.

DATED this 30 day of March, 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 30 day of March, 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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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

**SUPPLEMENTAL REPLY IN  
 SUPPORT OF THIRD-PARTY  
 DEFENDANT STANDLEY'S  
 MOTION FOR SUMMARY  
 JUDGMENT**

COMES NOW Third Party Defendant Standley Trenching, Inc., d/b/a Standley & Co. ("Standley"), and submits this Supplemental Reply to Plaintiffs Charles DeGroot's and DeGroot Dairy, LLC's ("DeGroot") Post-Hearing Brief on whether the Satisfaction of Judgment filed by DeGroot on its claims against Beltman Construction, Inc. d/b/a Beltman Welding and Construction ("Beltman") effectively extinguished the third party claims of Beltman.

Analysis of this issue must start with Beltman's assignment of its third-party claims against Standley to DeGroot. "It is well established that an assignee stands in the shoes of the assignor, and by that assignment the assignee could acquire no greater rights than its assignor." See 29 Williston on Contracts, § 74.47 (4<sup>th</sup> ed., 1999 Thomson West) (emphasis added). DeGroot "stands in the shoes" of Beltman and has no greater rights than Beltman with regard to its third-party claims.

The Court has dismissed Beltman's claims of negligence and violation of the Idaho Consumer Protection Act. Beltman's remaining third-party claims against Standley arise from the contract between Beltman and Standley for supplying and installing the manure handling equipment on the DeGroot dairy. Beltman alleged in its Third-Party Complaint that "Standley and/or Houle are liable to Beltman for all of the plaintiffs' [DeGroot's] claims against Beltman." First Am. Third-Party Compl., ¶2. Therefore, DeGroot, as the assignee of Beltman's claims is seeking to hold Standley liable for DeGroot's claims against Beltman.

On April 27, 2006, a Stipulated Judgment against Beltman was filed stating that DeGroot and Beltman stipulated "to entry of judgment on DeGroot's claims against Beltman in the amount of \$964,255.36." Following that, on September 12, 2006, DeGroot filed a Satisfaction of Judgment stating "SATISFACTION IS HEREBY ACKNOWLEDGED of the Judgment entered ... on the 27<sup>th</sup>

day of April, 2006, and the Clerk of the above-entitled Court is hereby authorized to enter satisfaction of record of said Judgment.”

A satisfaction of judgment is the last act and end of a proceeding; it extinguishes the judgment for all purposes and thereby promotes the interests of certainty and repose. *Dooley v. Cal-Cut Pipe & Supply, Inc.* 197 Colo. 362, 364, 593 P.2d 360, 362 (Colo., 1979) (holding language of satisfaction of judgment that “plaintiff hereby acknowledges and accepts full satisfaction of judgment” was unqualified and unequivocal, and thus was intended to release claim for additional attorney fees); and see, *Scott v. Denver*, 125 Colo. 68, 241 P.2d 857 (1952) (holding defendant voluntarily satisfied judgment by paying fine which operated to extinguish judgment for all purposes); *Stull v. Allen*, 165 Kan. 202, 193 P.2d 207 (1948) (holding that acceptance by a judgment creditor of money paid into court by the surety on a supersedeas bond in satisfaction of the judgment precludes him thereafter from enlarging the judgment previously entered, or enforcing further liability on the part of the surety); 49 C.J.S. Judgments § 577.

DeGroot acknowledges that the Satisfaction of Judgment operated to bar any further proceeding on its claims against Beltman. “DeGroot agrees that the Satisfaction operates to extinguish the judgment debt as between it and Beltman.” Pls.’ Post-Hr’g Br., p.3. By filing the Satisfaction of Judgment, DeGroot essentially agreed to forego payment of the judgment debt.

DeGroot’s entire argument is that Beltman’s assignment of its claims against Standley to DeGroot is the equivalent of “payment” for which Beltman should be “reimbursed” by Standley under a common law indemnity or subrogation theory. Relying on the Idaho Supreme Court’s analysis of indemnification and subrogation in *Chenery v. Agri-Lines Corp.*, 115 Idaho 281, 766 P.2d

751 (1988), DeGroot likens Agri-Lines' payment of \$157,000.00 to the plaintiffs for which it sought indemnification or subrogation from Layne Pump, to Beltman's assignment of its claims against Standley to DeGroot. The flaw in DeGroot's argument is its assertion that consideration, in whatever form, is the same as paying damages for which a party can seek reimbursement. While it is correct that a valid contract does not require the consideration to be in the form of money, that concept does not translate to the elements necessary to establish the right of indemnification or subrogation. "Both indemnity and subrogation are equitable principles based on the general theory that one compelled to pay damages caused by another should be able to seek recovery from that party." *Chenery* at 284, 766 P.2d at 754, quoting *May Trucking Company v. International Harvester Company*, 97 Idaho 319, 321, 543 P.2d 1159, 1161 (1975) (emphasis added). As the *Chenery* court explained, Agri-Lines' payment and attempt to obtain reimbursement was sufficient to allow recovery under either the theory of indemnification or subrogation. *Chenery* at 285, 766 P.2d at 755. Agri-Lines was out \$157,000.00 and it sought to get it back from Layne Pump. In the present action, what did Beltman "pay" in whatever form, that it can now seek to recover from Standley?

This question is even difficult for Plaintiffs to answer. DeGroot asserts that "[t]he Satisfaction in this case is no different than Agri-Lines' payment to the plaintiffs in *Chenery*." Pls.' Post-Hr'g Br., p.5. However, DeGroot, standing in the shoes of Beltman, is not seeking to recover damages that Beltman was "compelled to pay." Rather DeGroot is attempting to seek payment for what *it* gave up when it filed the Satisfaction of Judgment, that is, the value it placed on its claims against Beltman. As discussed above, DeGroot concedes its claims against Beltman were extinguished by the Satisfaction of Judgment. Moreover, DeGroot acquired no greater rights against

Standley than Beltman had. Should the Court take the approach that the executed Satisfaction of Judgment does not end this litigation and Plaintiffs' indemnification or subrogation theory in reliance on *Chenery* stands, it only allows DeGroot to recover what Beltman "paid" and Beltman paid nothing.

On this basis, Beltman's remaining contract claims should be dismissed.

DATED this 5 day of April, 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 5 day of April, 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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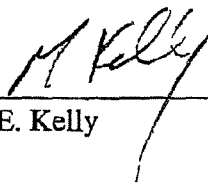
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Michael E. Kelly

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APR 27 2007

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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

<p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Plaintiffs/Counterdefendants,</p> <p>-vs-</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY &amp; CO., and J. HOULE &amp; FILS, INC., a Canadian corporation;</p> <p>Defendants,</p> <p>and</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY &amp; CO.,</p> <p>Counterclaimant.</p>	<p>CASE NO. CV 2001-7777</p> <p><b>MOTION TO RECONSIDER ORDER GRANTING DEFENDANT'S (STANDLEY) MOTION FOR SUMMARY JUDGMENT ENTERED ON MARCH 18, 2005</b></p>
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<p>CHARLES DeGROOT, and DeGROOT DAIRY, LLC,</p> <p>Plaintiffs,</p> <p>-vs-</p> <p>BELTMAN CONSTRUCTION, INC., d/b/a BELTMAN WELDING AND CONSTRUCTION, a Washington corporation;</p> <p>Defendant/Third Party Plaintiff</p> <p>v.</p> <p>STANDLEY TRENCHING, INC. d/b/a STANDLEY &amp; CO., an Idaho corporation, and J. HOULE &amp; FILS, INC.</p> <p>Third Party Defendants.</p>	<p><b>CASE NO. CV 2005-2277</b></p>
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COME NOW, Plaintiffs CHARLES DeGROOT, and DeGROOT DAIRY, LLC (collectively, "DeGroot"), by and through their undersigned counsel of record, the law firm of White Peterson, P.A., pursuant to Rules 7(b)(3) and 11(a)(2) of the Idaho Rules of Civil Procedure, and hereby move this Court to reconsider its Order granting Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Motion for Summary Judgment, entered on March 18, 2005.

This motion is supported by the pleadings and affidavits on file, the arguments previously presented by DeGroot in their *Memorandum in Opposition to Defendant Standley's Motion for Summary Judgment*, the arguments set forth below, and the *Affidavit of Kevin E. Dinius in Support of Motion to Reconsider* filed contemporaneously herewith.

## INTRODUCTION

Standley filed its *Motion for Summary Judgment* on DeGroot's claims against it in January 2005. The thrust of Standley's argument was that DeGroot did not have direct privity of contract with Standley and was not a third party beneficiary of Standley's contract with Third Party Plaintiff Beltman Construction, Inc. d/b/a Beltman Welding and Construction ("Beltman"), which prevented DeGroot's claims of breach of contract and breach of implied warranties from being cognizable as against Standley. DeGroot opposed the motion on the grounds that it was a third party beneficiary of the Beltman/Standley contract, as evidenced by the contract itself and by numerous other documents and deposition testimony. Ultimately, this Court, relying in part on *Nelson v. Anderson Lumber Company*, 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004), determined that DeGroot was not a third party beneficiary of the Beltman/Standley contract and granted Standley's motion. For the reasons that follow, DeGroot respectfully requests this Court reconsider its Order and enter an order denying Standley's motion for summary judgment on the ground that genuine issues of material fact exist as to whether DeGroot is a third party beneficiary of the Beltman/Standley contract.

## ARGUMENT

### **A. Genuine Issues of Material Fact Exist as to Whether DeGroot is a Third Party Beneficiary of the Beltman/Standley Contract.**

Under Idaho law, if a party can demonstrate that a contract was made expressly for its benefit, it may enforce the contract as a third party beneficiary. Idaho Code § 29-102; *Idaho Power Company v. Hulet*, 140 Idaho 110, 112, 90 P.3d 335, 337 (2004). The test for determining a party's status as a third party beneficiary is whether the agreement reflects an intent to directly benefit such third party. *Stewart v. Arrington Constr. Co.*, 92 Idaho 526, 446 P.2d 895 (1968). The third party must show that the contract was made "primarily for his benefit, and that it is not

sufficient that he be a mere incidental beneficiary.” *Id.* at 409, 690 P.2d at 344. Further, the “contract itself must express an intent to benefit the third party. This intent must be gleaned from the contract itself unless that document is ambiguous, whereupon the circumstances surrounding its formation may be considered.” *Id.* This “intent” doctrine was explained by the Idaho Supreme Court in *Hulet*, *supra*, as follows:

The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The intention of the parties in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and **the apparent purpose that the parties are trying to accomplish.**

140 Idaho at 113, 90 P.3d at 338 (*citing* 17A Am.Jur.2d § 441) (emphasis in original). The question of intent is largely a question of fact that must be resolved by the jury.

Under these guiding principles, it is clear that DeGroot is a third party beneficiary of the Beltman/Standley contract. The only written contract between Beltman and Standley was the so-called “bid” contract.<sup>1</sup> The face of the contract identifies the “DeGroot Dairy” as the job for which the bid was submitted. The purpose of the contract was to construct a dairy with a well-designed, operational manure handling system to handle an eventual capacity of 4,000 cows.

The circumstances under which the contract was made also support the conclusion that DeGroot is the intended third party beneficiary. DeGroot met Standley representatives at a trade show and spoke with them about installing such a manure handling system. In fact, DeGroot and Beltman agree that Standley was specifically sought out because of his expertise in the design and installation of manure handling systems. Beltman relied on Standley’s expertise in installing the manure handling system. At the time the contract was entered into, Standley knew that

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<sup>1</sup> See Exhibit B to Affidavit of Kevin E. Dinius in Support of Motion to Reconsider Order Granting Defendant’s (Standley) Motion for Summary Judgment Entered on March 18, 2005.

DeGroot would be paying for the construction of the dairy, including installation of the manure handling system. Thus, installation of the manure handling system would inure to the benefit of DeGroot upon completion.

Obviously, the circumstances as presented here are much different than a situation wherein a builder/developer contracts with a subcontractor to build a "spec" home. In that case, the subcontractor would be much like the lumber supplier in *Nelson, supra*, i.e., nothing more than a supplier who has no knowledge of the particular purpose for which its materials are sought or the ultimate purchaser of the supplies. Because no ultimate purchaser is identified, the ultimate purchaser could not be considered anything more than an incidental beneficiary of the contractor/subcontractor contract. As set forth above, however, the Beltman/Standley contract at issue here was executed directly for DeGroot's benefit, which was known to the parties at the time of contracting.

It is also plain from the multitude of documents presented in this case that DeGroot was the intended beneficiary of the Beltman/Standley contract. From the "bid" contract through the draw requests, every document transmitted by Standley, Houle and Beltman refers to DeGroot as the customer or otherwise identifies DeGroot.<sup>2</sup> At the very minimum, these documents establish a genuine issue of material fact relating to the parties' intent to benefit DeGroot at the time the Beltman/Standley contract was entered into. Accordingly, DeGroot requests this Court to grant its motion to reconsider and enter an order denying Standley's motion for summary judgment.

**B. As a Third Party Beneficiary of the Beltman/Standley Contract, DeGroot is Entitled to Seek Damages for Standley's Breach of Express and Implied Warranties.**

If DeGroot is a third party beneficiary of the Beltman/Standley contract, then they are entitled to seek damages for Standley's breach of any express or implied warranties because they

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<sup>2</sup> See Exhibit A to Affidavit of Kevin E. Dinius in Support of Plaintiffs' Motion to Reconsider Order Granting Defendant's (Standley) Motion for Summary Judgment, Entered on March 18, 2005.

step into the shoes of Beltman and can enforce any claims Beltman may have had. In granting Standley's motion for summary judgment, this Court agreed with Standley's reading of *Nelson*, *supra*, that a third party beneficiary of a contract may not be deemed to be in privity of contract for purposes of asserting damages for breach of implied warranties. Standley's understanding, and, respectfully, the Court's understanding of the holding of *Nelson* is erroneous. The *Nelson* court rejected the plaintiffs' third party beneficiary theory because they had presented no facts to support such a theory; the Court did not conclude, as a matter of law, that a third party beneficiary, under no circumstances, may not recover damages for breach of implied warranties.

Here, DeGroot presented numerous facts in their response to Standley's motion for summary judgment that support its position that it was a third party beneficiary of the Beltman/Standley contract. Because DeGroot's third party beneficiary status is disputed, it is inappropriate for the Court to conclude, as a matter of law, that DeGroot is precluded from asserting their claims for breach of implied warranties. To that end, DeGroot respectfully requests this Court to grant its motion to reconsider and enter an order denying Standley's motion for summary judgment.

### CONCLUSION

For the foregoing reasons, DeGroot urges this Court to reconsider its decision granting Standley's motion for summary judgment.

ORAL ARGUMENT IS REQUESTED.

DATED this 27<sup>th</sup> day of April, 2007.

WHITE PETERSON, P.A.

By: 

Kevin E. Dinius

Attorneys for Plaintiffs

## CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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