

12-12-2012

DeGroot v. Standley Trenching, Inc. Clerk's Record v. 6 Dckt. 39406

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(VOLUME 6)

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

LAW CLERK

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

**Plaintiffs-Counterdefendants-
Appellants,**

-vs-

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

**Defendant-Counterclaimant-
Respondent,**
and

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

Defendant-Respondent.



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

Honorable GREGORY M. CULET, District Judge

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

Attorneys for Appellants

M. Michael Sasser
SASSER & INGLIS, PC

Robert D. Lewis
CANTRILL SKINNER SULLIVAN & KING LLP

Attorneys for Respondents

39406

IN THE SUPREME COURT OF THE
STATE OF IDAHO

CHARLES JAY DE GROOT and)
DE GROOT FARMS, LLC.,)
)
Plaintiffs-Counterdefendants-)
Appellants,)
)
-vs-)
)
STANDLEY TRENCHING, INC.,)
d/b/a STANDLEY & CO.,)
)
Defendant-Counterclaimant-)
Respondent,)
And)
)
J. HOULE & FILS, INC., a)
Canadian corporation,)
)
Defendant-Respondent.)

Supreme Court No. 39406-2011

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

HONORABLE GREGORY M. CULET, Presiding

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

Attorneys for Appellants

M. Michael Sasser, SASSER & INGLIS, PC.

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

Attorneys for Respondents

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CHARLES DeGROOT and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)
vs.)
)
BELTMAN CONSTRUCTION, INC., dba)
BELTMAN WELDING AND)
CONSTRUCTION, a Washington corporation,)
)
Defendant/Third-Party)
Plaintiff,)
vs.)
)
STANDLEY TRENCHING, INC., dba)
STANDLEY & CO., an Idaho corporation;)
J. HOULE & FILS, INC., a Canadian)
corporation,)
Third-Party Defendants.)

COMES NOW the above-named Defendant/Third-Party Defendant, Standley Trenching, Inc. (hereinafter "Standley"), by and through undersigned counsel and pursuant to Rule 54(d)(1) and 54(d)(5) of the Idaho Rules of Civil Procedure, and further, pursuant to I.C. § 12-120(3) and Rule 54(e)(1) and 54(e)(3) of the Idaho Rules of Civil Procedure, moves the Court to award its attorney fees incurred in defending this consolidated litigation in both Case No. CV 01-7777 and CV 05-2277.

Standley seeks its costs and attorney fees for the defense of these cases based upon the filing of three separate Memorandums of Costs and Attorney Fees, as follows:

- In Case Number CV 01-7777, pursuant to Defendant Standley's Memorandum of Costs and Attorney Fees, Affidavit of Michael E. Kelly, Affidavit of Kevin F. Trainor, and Memorandum In Support of Defendant Standley's Memorandum of Costs and Attorney Fees, filed April 18, 2005 (costs in the amount of \$3,927.00 and fees in the amount of \$75,070.55, for a total amount of \$78,997.55).
- In Case Numbers CV 01-7777 and CV 05-2277, pursuant to Defendant Standley's Supplemental Memorandum of Costs and Attorney Fees and Affidavit

DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS - 2.

of Michael E. Kelly, filed November 22, 2011 (costs in the amount of \$10,502.70 and fees in the amount of \$73,096.00, for a total amount of \$83,598.70).


- In Case Number CV 05-2277, pursuant to Defendant/Third Party Defendant Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees, Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees, and Defendant/Third Party Defendant Standley Trenching, Inc.'s Memorandum of Law in Support of its Memorandum of Costs and Attorney Fees, filed November 22, 2011 (costs in the amount of \$1,460.90 and fees in the total amount of \$43,412.50, for a total amount of \$44,873.40).

Standley grounds its motion for costs on the basis that it is the prevailing party in this matter, and that costs are allowed as a matter of right and/or discretionary costs. Further, pursuant to I.C. § 12-120(3) and Rule 54(e)(1), Standley is entitled to its attorney fees on the basis that it is the prevailing party against the Plaintiffs' in both Case Number CV 01-7777 and in Case Number CV 05-2277, each of which involved a commercial transaction. This motion is supported by Standley's Memorandum of Costs, Disbursements, and Fees, and the Affidavit of M. Michael Sasser filed in support thereof.¹ Also, to the best of Standley's knowledge, items contained in this Motion and the accompanying Memorandum and Affidavit are correct and the costs claimed are in compliance with I.R.C.P. 54(d)(5).

Standley requests oral argument with respect to this motion.

DATED this 22nd day of November 2011.

SASSER & INGLIS, P.C.

By 
M. Michael Sasser, Of the Firm
Attorneys for Third-Party Defendant
Standley Trenching, Inc.

¹ Together with the initial Memorandum of Costs and Attorney Fees, Affidavits, and Memorandum of Law filed by Michael E. Kelly, Standley's former attorney in Case Number CV 01-7777.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

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Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

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M. Michael Sasser

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 A.M. 1:05 P.M.

NOV 22 2011
 CANYON COUNTY CLERK
 K CANO, DEPUTY

Attorneys for Defendant/Third Party Defendant,
 Standley Trenching, Inc., dba 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,

vs.

STANDLEY TRENCHING, INC., dba
 STANDLEY & CO.; J. HOULE & FILS, INC., a
 Canadian corporation,

Defendants,

and

STANDLEY TRENCHING, INC., dba
 STANDLEY & CO.,

Counterclaimant.

)
)
) Case No. CV 01-7777
) Case No. CV 05-2277
)

)
) **DEFENDANT/THIRD-PARTY**
) **DEFENDANT STANDLEY TRENCHING,**
) **INC.'S MEMORANDUM OF COSTS AND**
) **ATTORNEYS' FEES**
)

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
 MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 1.**

CHARLES DeGROOT and DeGROOT FARMS, LLC,)
)
Plaintiffs,)
vs.)
)
BELTMAN CONSTRUCTION, INC., dba BELTMAN WELDING AND CONSTRUCTION, a Washington corporation,)
)
Defendant/Third-Party Plaintiff,)
vs.)
)
STANDLEY TRENCHING, INC., dba STANDLEY & CO., an Idaho corporation; J. HOULE & FILS, INC., a Canadian corporation,)
)
Third-Party Defendants.)

COMES NOW the above-named Defendant/Third-Party Defendant, Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley"), by and through undersigned counsel and pursuant to Rules 54(d)(1), 54(d)(5) and 54(e)(1) of the Idaho Rules of Civil Procedure, and requests that the Court award Standley its attorneys' fees and costs incurred in defense of Plaintiff's multiple causes of action stated against Standley in Case Number CV 05-2277, in this consolidated litigation. To the best of Standley's knowledge and belief, the items contained herein are correct and that the costs claimed are in compliance with I.R.C.P. 54(d)(5).

On November 3, 2011, the Court issued its Decision and Order Granting Standley's Motion for Summary Judgment in the above-entitled matter. Thereafter, Judgment in favor of the Defendant and against the Plaintiff was entered on November 8, 2011.

Standley, as a prevailing party, seeks its costs incurred in the defense of this matter.

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 2.**

COSTS AS A MATTER OF RIGHT

<u>Description</u>	<u>Amount</u>
1. N/A	<u>\$ N/A</u>
Total Costs as a Matter of Right:	<u>\$ N/A</u> ¹

DISCRETIONARY COSTS

Total Discretionary Costs: I.R.C.P. 54(d)(1)(D) allows a prevailing party to recover additional items of cost not enumerated in, or in an amount in excess of that listed in subsection (C), of this rule of Idaho Civil Procedure. In order to recover these discretionary costs, incurred by Standley in Case Number CV 05-2277, Standley must show that the costs were (i) necessary, (ii) reasonably incurred, (iii) exceptional, and (iv) should be awarded in the interest of justice. I.R.C.P 54(d)(1)(D); *see also, Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005). Standley claims \$1,623.38 in discretionary costs that were necessary, reasonably incurred, exceptional and in the interest of justice should be awarded to it.

The items of costs as set forth in this Memorandum of Costs are as follows:

Photocopy Expenses:	\$ 573.40
Mediation cost:	<u>\$ 887.50</u>
Total:	<u>\$1,460.90</u>

¹ The costs recoverable by Standley as a prevailing party and as a matter of right were incurred in Case Number CV 01-7777, which were previously submitted by Michael E. Kelly, Standley's former attorney in this consolidated litigation.

ATTORNEY FEES

In Case Number CV 05-2277, Standley answered Third Party Plaintiff Beltman Construction, Inc.'s Third Party Complaint, Amended Complaint, and Second Amended Complaint; propounded and responded to discovery; interviewed numerous personnel with Standley having knowledge or information of the issues alleged by both DeGroot and Beltman; analyzed the facts and issues presented in the litigation with potential witnesses; and prepared and/or filed the following documents:

- Standley Trenching, Inc.'s Memorandum in Opposition to Plaintiffs' Motion to Reconsider March 18, 2005 Order [3/25/10]
- Confidential Mediation Statement of Standley Trenching [1/21/11]
- Motion for Partial Summary Judgment [5/26/11]
- Memorandum in Support of Motion for Partial Summary Judgment
- Affidavit in Support of Motion for Partial Summary Judgment
- Motion in Limine [5/26/11]
- Affidavit in Support of Motion in Limine
- Memorandum in Support of Motion in Limine
- Reply Memorandum in Support of Motion for Partial Summary Judgment [8/31/11]
- Supplemental Memorandum in Support of Its Motion for Summary Judgment and Motion in Limine (Indemnification Issue) [9/16/11]
- Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Supplemental Memorandum Regarding Its Motion for Summary Judgment and Motion in Limine (Indemnification Issue)
- Order Granting Standley Trenching, Inc.'s Complete Motion for Summary Judgment As to All Claims and Causes of Action Stated in Beltman Construction, Inc.'s Third-Party Complaint [11/2/11]
- Third-Party Defendant Standley Trenching, Inc.'s Motion for Costs and Attorneys' Fees [11/22/11]
- Affidavit of M. Michael Sasser in Support of Motion for Costs and Attorneys' Fees
- Third-Party Defendant Standley Trenching, Inc.'s Memorandum of Costs and Attorneys' Fees
- Memorandum of Law in Support of Motion for Costs and Attorney Fees

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 4.**

This Memorandum of Costs and Attorney Fees, in Case Number CV 05-2277 is supported by the Affidavit of M. Michael Sasser. The attorney fees incurred in the defense of this matter are explained more fully in the Affidavit of M. Michael Sasser accompanying the filing of this Memorandum of Costs.

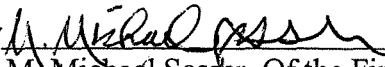
The attorney fees are based on a fixed rate of \$100.00 to \$125.00 per hour. The fees charged are in line with the prevailing rates in the Boise, Idaho area. The total amount of attorney fees is reasonable, in light of the legal and factual issues presented by this case. The total sum of attorney fees for services rendered through October 28, 2011 is \$43,412.50.

TOTAL ATTORNEY FEES CLAIMED: \$43,412.50

This Memorandum of Costs and Attorney Fees is supported by the Affidavit of M. Michael Sasser filed herewith.

DATED this 22nd day of November, 2011.

SASSER & INGLIS, P.C.

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

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 5.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 475-0101

Attorney for Plaintiffs/Counterdefendants
Charles DeGroot and DeGroot Farms, LLC

William A. McCurdy
702 W. Idaho, Ste. 1100
Boise, Idaho 83702

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission - 947-5910

Attorneys for Defendants/Third-Party
Defendant J. Houle & Fils, Inc.

Robert D. Lewis
Cantrill Skinner Sullivan & King, LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 345-7212


Attorneys for Counterclaimant Standley
Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet
District Judge
1115 Albany Street
Caldwell, Idaho 83605

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Alexa Medema
Law Clerk to Hon. Gregory Culet

Hand Delivery
 Email – amedema@3rdjd.net


M. Michael Sasser

6823 Memo in Supp of Mot for Atty Fees and Costs.doc

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 6.**

F I L E D
A.M. 12:05 P.M.

NOV 22 2011

**CANYON COUNTY CLERK
K CANO, DEPUTY**

M. Michael Sasser [ISB No. 1666]
SASSER & INGLIS, P.C.
Attorneys at Law
1902 W. Judith Lane, Suite 100
P.O. Box 5880
Boise, Idaho 83705
Telephone No. (208) 344-8474
Facsimile No. (208) 344-8479

Attorneys for Defendant/Third Party Defendant,
Standley Trenching, Inc., dba 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,	)	Case No. CV 01-7777
	)	Case No. CV 05-2277
)	
Plaintiffs/)	
Counterdefendants,)	
vs.)	
)	
STANDLEY TRENCHING, INC., dba	)	DEFENDANT STANDLEY'S
STANDLEY & CO.; J. HOULE & FILS, INC.,	)	SUPPLEMENTAL MEMORANDUM OF
a Canadian corporation,	)	COSTS AND ATTORNEYS' FEES
)	
Defendants,)	
and)	
)	
STANDLEY TRENCHING, INC., dba)	
STANDLEY & CO.,)	
)	
Counterclaimant.)	
_____)	

**DEFENDANT STANDLEY'S SUPPLEMENTAL MEMORANDUM OF COSTS AND
ATTORNEYS' FEES - 1.**

CHARLES DeGROOT and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)
vs.)
)
BELTMAN CONSTRUCTION, INC., dba)
BELTMAN WELDING AND)
CONSTRUCTION, a Washington corporation,)
)
Defendant/Third-Party)
Plaintiff,)
vs.)
)
STANDLEY TRENCHING, INC., dba)
STANDLEY & CO., an Idaho corporation;)
J. HOULE & FILS, INC., a Canadian)
corporation,)
Third-Party Defendants.)

COMES NOW the above-named Defendant/Third-Party Defendant Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley"), by and through undersigned counsel and pursuant to Rules 54(d)(1), 54(d)(5) and 54(e)(1) of the Idaho Rules of Civil Procedure, and submits this Supplemental Memorandum of Costs and Attorney Fees requesting that the Court award Standley its attorneys' fees and costs incurred in defense of Plaintiffs' multiple causes of action stated against Standley in Case Number CV 01-7777 and Case Number CV 05-2277, in this consolidated litigation. To the best of Standley's knowledge and belief, the items contained herein are correct and the costs claimed are in compliance with I.R.C.P. 54(d)(5).

The items set forth in this Supplemental Memorandum of Costs and Attorney Fees were incurred by Standley's former attorneys, the law firm of Lopez & Kelly, PLLC after the filing of Standley's initial Memorandum of Costs and Attorney Fees dated April 18, 2005.

DEFENDANT STANDLEY'S SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 2.

The Court, pursuant to its Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of the Case, filed on August 18, 2005, declined to rule on Standley's initial Memorandum of Costs and Attorney Fees pending resolution of the consolidated litigation. As Standley's former defense counsel continued to represent Standley and provide it with a defense in the consolidated litigation, the items set forth herein were incurred after the filing of Standley's initial Memorandum of Costs and Attorney Fees and include attorney fees and costs up to the point of Sasser & Inglis, P.C.'s substitution for Lopez & Kelly, PLLC, as Standley's attorneys in the consolidated litigation.

To the best of Standley's knowledge and belief the items set forth in this Supplemental Memorandum of Costs and Attorney Fees are correct and the costs claimed are in compliance with I.R.C.P 54(d)(5).

I.

SUPPLEMENTAL COSTS AS A MATTER OF RIGHT-I.R.C.P. 54(d)(1)(C)

<u>Description</u>	<u>Amount</u>
Actual fees for service	\$ 1,030.35
Witness fees	\$ 57.07
Depositions:	
Stan Beltman	\$ 89.50
M&M Court Reporting Invoices	\$ 793.56
Expert Witness fees:	
Dennis Burke	\$ 2,991.00
Intermountain Ag. Services	\$ 4,728.75
EAC Engineering, Inc.	\$ 650.00
Copies of Depositions	\$ 19.70
Travel Expense of witnesses:	
Earnest DeGroot	\$ 32.61
Andy Ward	\$ 25.35
Bruce Cooper	\$ 29.82
Gret Troost	\$ 28.63
Jon Roth	<u>\$ 26.36</u>

DEFENDANT STANDLEY'S SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 3.

Total Supplemental Costs
as a Matter of Right:

\$10,502.70

The supplemental costs incurred by Standley's former attorneys, Lopez & Kelly, PLLC, are mandatory and should be awarded to Standley as a matter of right. These mandatory supplemental costs were incurred by Lopez & Kelly, PLLC, in the time span in which that law firm continued to represent and defend Standley in the consolidated litigation, after the filing of Standley's initial Memorandum of Costs and Attorney Fees, dated April 18, 2005, up to the point when the law firm of Sasser & Inglis, P.C. substituted as counsel of record for Standley. Further, Standley continues to assert its initial Memorandum of Costs and Attorney Fees in addition to seeking an award of its supplemental costs and attorney fees set forth herein.

II.

SUPPLEMENTAL ATTORNEY FEES-I.R.C.P. 54(e)(1)

TOTAL SUPPLEMENTAL ATTORNEY FEES CLAIMED: **\$ 73,096.00**

This Supplemental Memorandum of Costs and Attorney Fees, in Case Number CV 01-7777 and Case Number CV 05-2277, is supported by the Affidavit of Michael E. Kelly, member of the law firm Lopez & Kelly, PLLC, former attorneys for Standley in this consolidated litigation. The supplemental attorney fees incurred in the defense of this matter are explained more fully in the Affidavit of Michael E. Kelly accompanying the filing of this Supplemental Memorandum of Costs and Attorney Fees.

The attorney fees are based on a fixed rate of \$105.00 to \$125.00 per hour. The fees charged are in line with the prevailing rates in the Boise, Idaho area. The total amount of attorney fees is reasonable, in light of the legal and factual issues presented in this case. The

DEFENDANT STANDLEY'S SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 4.

total supplemental sum of attorney fees for services rendered by Howard Lopez & Kelly, PLLC, to Standley after the filing of Standley's initial Memorandum of Costs and Attorney Fees through July, 2007 is \$73,096.00. Standley further seeks award of its costs and attorney fees as originally set forth in its initial Memorandum of Costs and Attorney Fees, dated April 18, 2005, on file with the Court herein.

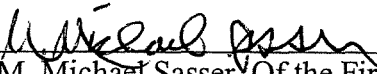
III.

CONCLUSION

Standley, as the prevailing party in this action, respectfully requests that this Court award the foregoing supplemental costs and attorney fees which are supported by the Supplemental Memorandum of Costs and Attorney Fees and the Affidavit of Michael E. Kelly filed contemporaneously herewith. Standley further seeks award of its costs and attorney fees supported by its initial Memorandum of Costs and Attorney Fees and the Affidavits of Counsel filed contemporaneously therewith.

DATED this 22nd day of November, 2011.

SASSER & INGLIS, P.C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

Hand Delivery
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 Fax Transmission – 475-0101

Attorney for Plaintiffs/Counterdefendants
Charles DeGroot and DeGroot Farms, LLC

William A. McCurdy
702 W. Idaho, Ste. 1100
Boise, Idaho 83702

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Attorneys for Defendants/Third-Party
Defendant J. Houle & Fils, Inc.

Robert D. Lewis
Cantrill Skinner Sullivan & King, LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701

Hand Delivery
 United States Mail
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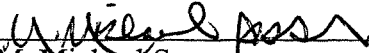
Attorneys for Counterclaimant Standley
Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet
District Judge
1115 Albany Street
Caldwell, Idaho 83605

Hand Delivery
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 Express Mail
 Fax Transmission – 455-6048

Alexa Medema
Law Clerk to Hon. Gregory Culet

Hand Delivery
 Email – amedema@3rdjd.net


M. Michael Sasser

Supp. Memo in Supp of Mot for Atty Fees and Costs.doc

DEFENDANT STANDLEY'S SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEYS' FEES - 6.

F I L E D
A.M. 12:00 P.M.

M. Michael Sasser [ISB No. 1666]
SASSER & INGLIS, P.C.
Attorneys at Law
1902 W. Judith Lane, Suite 100
P.O. Box 5880
Boise, Idaho 83705
Telephone No. (208) 344-8474
Facsimile No. (208) 344-8479

NOV 22 2011

**CANYON COUNTY CLERK
K CANO, DEPUTY**

Attorneys for Defendant/Third Party Defendant,
Standley Trenching, Inc., dba 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,

vs.

STANDLEY TRENCHING, INC., dba,
STANDLEY & CO.; J HOULE & FILS, Inc.,
a Canadian corporation;

Defendants.

and

STANDLEY TRENCHING, INC., dba
STANDLEY & CO.,

Counterclaimant,

CHARLES DeGROOT AND DeGROOT
FARMS, LLC,

Plaintiffs,

vs.

Case No. CV 01-7777
Case No. CV 05-2277

**AFFIDAVIT OF MICHAEL E. KELLY
IN SUPPORT OF STANDLEY
TRENCHING, INC.'S SUPPLEMENTAL
MEMORANDUM OF COSTS AND
ATTORNEY FEES**

**AFFIDAVIT OF MICHAEL E. KELLY IN SUPPORT OF STANDLEY TRENCHING, INC.' S
SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEY FEES - 1.**

BELTMAN CONSTRUCTION, INC., dba,)
 BELTMAN WELDING AND)
 CONSTRUCTION, a Washington)
 corporation,)
 Defendant/Third-Party)
 Plaintiff)
 vs.)
 STANDLEY TRENCHING, INC., dba,)
 STANDLEY & CO., an Idaho corporation;)
 J. HOULE & FILS, INC., a Canadian)
 corporation,)
 Third-Party Defendants.)
 _____)

STATE OF IDAHO)
) ss.
 County of Ada,)

MICHAEL E. KELLY, having been first duly sworn on oath, deposes and says:

1. I am a member of the firm of Lopez & Kelly, PLLC, former attorneys of record for Defendant Standley Trenching, Inc., (herein after referred to as "Standley"), in this matter.
2. That this Affidavit is submitted in support of Defendant's Supplemental Motion for Costs and Attorneys Fees.
3. That following the Court's granting a summary judgment in Case Number CV 01-7777 in favor of Defendant Standley Trenching, Inc., your Affiant submitted a Memorandum of Costs and Attorney Fees, dated April 18, 2005, supported by Affidavits and a Memorandum of Law on behalf of Defendant Standley Trenching, Inc.

AFFIDAVIT OF MICHAEL E. KELLY IN SUPPORT OF STANDLEY TRENCHING, INC.' S SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEY FEES - 2.

4. That pursuant to the Court's Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of the Case, filed on August 18, 2005, the Court did not address Standley's initial Memorandum of Costs and Attorney Fees.

5. That following the filing of the initial Memorandum of Costs and Attorney Fees supported by Affidavits, your Affiant continued to provide a defense for Standley in the consolidated litigation, incurring additional attorney's fees and costs which were not included in Standley's initial Memorandum of Costs and Attorney Fees.

6. That the additional costs and attorney fees set forth in the Supplemental Memorandum of Costs and Attorney Fees submitted herewith were incurred on behalf of Standley after the filing of Standley's initial Memorandum of Costs and Attorney Fees, spanning the May, 2005 through July, 2007 time frame.

7. Pursuant to I.R.C.P. 54(d)(1)(B), Standley is the prevailing party in the consolidated litigation, both as a result of Standley's motion for summary judgment on March 1, 2005, and further, as a result of Standley's second motion for summary judgment and the ruling thereon, set forth in the Court's Order dated November 3, 2011.

8. That as the prevailing party in this matter, Standley is entitled to its attorney's fees pursuant to I.R.C.P. 54(e)(1) and I.C. §12-120(3) based upon the commercial transaction between Standley and Plaintiffs Charles DeGroot and DeGroot Farms, L.L.C.

9. That pursuant to I.R.C.P. 54(e)(5), the method of computation of this firm's fees is based upon the number of hours worked on this matter multiplied by \$125.00 per hour for partners and \$105.00 per hour for associates, the customary hourly rate charged to the client's insurance carrier in this matter.

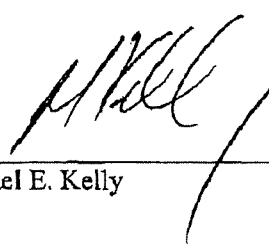
**AFFIDAVIT OF MICHAEL E. KELLY IN SUPPORT OF STANDLEY TRENCHING, INC.' S
SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEY FEES - 3.**

10. That your Affiant has personally reviewed the supplemental billing records and invoices compiled by this law firm and transmitted to the client's insurance carrier, attached hereto as Exhibit "A".

11. That to the best of Affiant's knowledge these invoices are the true and correct amount of fees generated by this law firm in the defense of this matter incurred after the filing of Standley's initial Memorandum of Costs and Attorney Fees. Further, to the best of Affiant's belief, the items set forth in the Supplemental Memorandum of Costs and Attorney's Fees, filed herewith, are correct and that the costs claimed are in compliance with I.R.C.P. 54(d)(5).

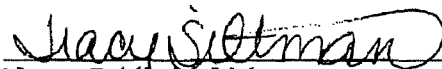
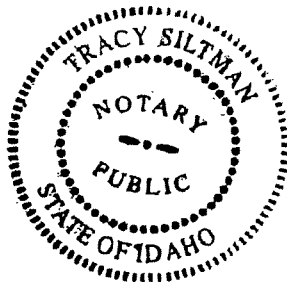
12. That the attorney fees generated by this law firm are reasonable in light of the factors set forth in I.R.C.P. 54(e)(3).

DATED this 21st day of November, 2011.



Michael E. Kelly

SUBSCRIBED AND SWORN to before me this 21st day of November, 2011.



Notary Public for Idaho

Residing at: Boise ID

My Commission Expires: 8-6-16

AFFIDAVIT OF MICHAEL E. KELLY IN SUPPORT OF STANDLEY TRENCHING, INC.' S SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEY FEES - 4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

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Attorney for Plaintiffs/Counterdefendants
Charles DeGroot and DeGroot Farms, LLC

William A. McCurdy
702 W. Idaho, Ste. 1100
Boise, Idaho 83702

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Attorneys for Defendants/Third-Party
Defendant J. Houle & Fils, Inc.

Robert D. Lewis
Cantrill Skinner Sullivan & King, LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701

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Attorneys for Counterclaimant Standley
Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet
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Caldwell, Idaho 83605

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Law Clerk to Hon. Gregory Culet

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M. Michael Sasser

Aff of M. Kelly in Supp of Mot for Atty Fees and Costs.doc

**AFFIDAVIT OF MICHAEL E. KELLY IN SUPPORT OF STANDLEY TRENCHING, INC.' S
SUPPLEMENTAL MEMORANDUM OF COSTS AND ATTORNEY FEES - 5.**

EXHIBIT "A"

02000160

~~Howard~~ Lopez & Kelly, PLLC

702 West Idaho Street Suite 1100

P.O. Box 856
Boise, ID 83701

Telephone: (208) 342-4300
Facsimile: (208) 342-4344

www.idahodefense.com
TIN: 82-0536194

Continental Western Group
3320 East Goldstone Way
Meridian, ID 83642

April 5, 2006

CWG CLAIMS - RMR

Attn: John Mallary

APR 11 2006

RE: DeGroot v. Standley, et al.

HLK File #: 2531017
HLK Inv. #: 3381-

Client File/Claim Number: 11F500652

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Dec-01-05	Continued preparation of discovery to Defendant/Third Party Plaintiff (2.1).	2.10	220.50	PMD
Dec-02-05	Receipt and review Court's Order setting Trial and Pretrial (0.1); telephone call with Court re: resetting of Pretrial Conference (0.1).	0.20	25.00	MEK
Dec-14-05	Continued preparation of discovery to Defendant, Third-Party Plaintiff Beltman (3.1).	3.10	325.50	PMD
Jan-05-06	Receipt and review Proposed Stipulation for Scheduling and Planning from Plaintiff's counsel (0.2).	0.20	25.00	MEK
Jan-06-06	Telephone call with Insured's counsel re: Plaintiff's Proposed Stipulation for Scheduling and Planning (0.1); telephone call with Plaintiff's counsel re: Proposed Stipulation (0.1).	0.20	25.00	MEK
Jan-10-06	Receipt and review Plaintiff's Amended Proposed Stipulation for Scheduling and Planning (0.1).	0.10	12.50	MEK
Jan-13-06	Receipt and review executed Stipulation of Scheduling and Planning from Counsel for J. Houle (0.1).	0.10	12.50	MEK
Jan-17-06	Letter to Counsel of Record with executed Stipulation for Scheduling and Planning (0.1).	0.10	12.50	MEK
Jan-23-06	Receipt and review correspondence from Insured's counsel on Counterclaim with executed Stipulation for Scheduling and Planning (0.1).	0.10	12.50	MEK
Feb-09-06	Review and revise Insured's Interrogatories and Request for Production of Documents to Third-Party Plaintiff, Beltman Construction (0.9).	0.90	112.50	MEK

Feb-12-06	Revise discovery prepared on behalf of Insured to Third-Party Plaintiff Beltman (0.7).	0.70	73.50	PMD
Feb-28-06	Prepare Action Plan Report for Company (1.1).	1.10	115.50	PMD
Mar-02-06	Review Insured's deposition and attached documents in further preparation of Action Plan (0.5); review Beltman's deposition and attached documents in further preparation of Action Plan (0.4); review UCC in further preparation of Action Plan (0.2); review case law related to common law indemnification in further preparation of Action Plan (0.3); continued preparation of Action Plan (1.5).	2.90	304.50	PMD
Mar-06-06	Review, revise and final Action Plan report (0.8).	0.80	100.00	MEK
	Continue preparation of Company Action Plan (1.4).	1.40	147.00	PMD
Mar-09-06	Telephone call with Insured re: case status and trial date (0.2).	0.20	25.00	MEK
Mar-22-06	Draft Motion to Compel and Memorandum in Support of the Motion to Compel (1.4).	1.40	147.00	WMP
Mar-24-06	Review and revise brief in Support of Motion to Compel (0.3); draft Affidavit in Support of Motion to Compel (0.2).	0.50	62.50	MEK
	Totals	16.10	<u>\$1,758.50</u>	

FEE SUMMARY

Lawyer/Paralegal	Hours	Effective Rate	Amount
Michael E. Kelly	3.40	\$125.00	\$425.00
Wendy M. Powell	1.40	\$105.00	\$147.00
Peg M. Dougherty	11.30	\$105.00	\$1,186.50

DISBURSEMENTS

	Disbursements	Receipts
Dec-01-05	Photocopies - Pleading 12 @ 0.10	1.20
Feb-13-06	Photocopies - Correspondence and Pleading 63 @ 0.15	9.45
	Photocopies - Pleading 10 @ 0.15	1.50
Mar-02-06	Online Research - Westlaw Expense 1 @ 7.43	7.43
Mar-16-06	Telephone - Long Distance Expense 5 @ 0.14	0.70

Invoice #: 3381

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April 5, 2006

Totals	\$20.28	\$0.00
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Total Fees & Disbursements Due this Billing Cycle		\$1,778.78
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Previous Balance

Previous Payments

Balance Forward + Current Balance = Total Now Due		\$1,778.88
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TIN: 82-0536194

Continental Western Group
3320 East Goldstone Way
Meridian, ID 83642

November 8, 2006

Attn: John Mallary

RE: DeGroot v. Standley, et al.

Client File/Claim Number: ~~11E500652~~

HLK File #: 2531017

HLK Inv. #: 3842

CWG CLAIMS-RMR

NOV 14 2006

02000160

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Aug-01-06	Bates stamp and index of discovery documents received from Plaintiffs re: Beltman Construction projects (3.5).	3.50	245.00	TAV
Aug-02-06	Receipt and review correspondence from Plaintiffs' counsel re: Stipulated Judgment and proposed Order re: Scheduling and Planning with original Stipulation as to scheduling and planning (0.2).	0.20	25.00	MEK
Aug-03-06	Meet with Co-Defendant's counsel re: strategy and scheduling of Plaintiff/Third Party Plaintiff depositions (0.8); prepare deposition Notices Duces Tecum re: C. DeGroot, E. DeGroot, T. Beltman, S. Beltman, D. Burke, D. Morrison, T. Storm, D. Stubbs (0.5); prepare interrogatories and request for production of documents to Plaintiffs re: assignment documents (0.8).	2.10	262.50	MEK
Aug-08-06	Receipt and review executed Order for Scheduling and Planning (0.1).	0.10	12.50	MEK
	Index and Bates stamp discovery documents received from Third Party Plaintiff Beltman Construction (3.0).	3.00	210.00	TAV
Aug-09-06	Revise deposition notices re: Plaintiffs' experts (0.1); letter to Plaintiffs' counsel re: experts' depositions (0.1); letters to witnesses, Storm and Morrison re: depositions and subpoenas (0.2).	0.40	50.00	MEK
	Continue indexing documents received from Third Party Plaintiff Beltman Construction (3.1).	4.10	287.00	TAV

Aug-18-06	Organize and reconcile all documents produced in litigation with newly produced documents (4.1).	4.10	287.00	TAV
Aug-21-06	Receipt and review Affidavit of Service from process server re: Dean Morrison (0.1).	0.10	12.50	MEK
Aug-23-06	Receipt and review Affidavit of Service re: Tom Storm deposition (0.1).	0.10	12.50	MEK
Sep-05-06	Telephone call with Beltman's personal counsel re: assignment of claims to DeGroot (0.3).	0.30	37.50	MEK
Sep-06-06	Letter to Plaintiff's counsel re: Tom Storm deposition (0.1); telephone call with Insured re: upcoming depositions (0.2); receipt and review correspondence from Plaintiffs' counsel re: deposition schedule (0.1); receipt and review correspondence from Plaintiff's counsel re: Tom Storm deposition (0.1); telephone call with Insured re: Tom Storm deposition testimony (0.2).	0.70	87.50	MEK
Sep-07-06	Telephone call with Co-Defendant Houle's counsel re: filing of Motion for Protective Order by Plaintiff's counsel (0.1); letter to Plaintiff's counsel re: Tom Storm deposition (0.1); review previous deposition testimony of Tom Storm re: assessment of Insured's culpability (1.5).	1.70	212.50	MEK
Sep-08-06	Receipt and review Plaintiff's Motion for Protective Order re: deposition of C. DeGroot, E. DeGroot and T. Storm and Affidavit of Counsel in Support (1.1); receipt and review Third Party Plaintiff Beltman's Supplemented Responses and Answers to Insured's discovery (1.5); receipt and review Plaintiff's Responses and Answers to Insured's discovery (0.3); telephone call with Co-Defendant Houle's counsel re: Plaintiff's Motion for Protective Order (0.2); prepare for deposition of Third Party Plaintiff representative Stan Beltman (3.6); prepare for deposition of Tom Beltman (2.0).	8.70	1,087.50	MEK

Sep-11-06	Continue preparations for Stan Beltman deposition (1.8); attend deposition of Stan Beltman (2.1); meet with Beltman's WA counsel re: retention of ID counsel for Beltman (0.3); letter to Plaintiff's counsel re: vacation of remaining depositions scheduled for this week (0.1); telephone call with Plaintiff's counsel re: proposed Motion to Substitute as Third Party Plaintiff (0.2); receipt and review Plaintiff's Rule 25(c) Motion to Substitute as Third Party Plaintiff, Notice of Hearing re: Motion to Substitute and Motion for Protective Order and Motion and Order to Shorten Time (0.6); telephone call with Co-Defendant Houle's counsel re: Plaintiffs' Motion (0.2); receipt and review email correspondence from Plaintiffs' counsel re: Motion to Substitute (0.1).	5.40	675.00	MEK
Sep-12-06	Review statutes and case law re: on Rule 25(c) motions (0.9).	0.90	112.50	MEK
	Continue review IRCP 25 and annotations re: transfer of interests under plaintiffs' motion (1.7); receipt and review Plaintiffs' Amended Motion to Substitute as Third Party Plaintiff (0.2).	1.90	237.50	MEK
	Telephone conference with counsel for Co-Defendant Houle re: response to Beltman's Motions (0.2).	0.20	21.00	PMD
Sep-13-06	Draft memorandum in response to DeGroot's Rule 25(c) substitution motion (2.5).	2.50	312.50	MEK
	Prepare brief in response to Plaintiff's Motion for Protective Order (2.4).	2.40	300.00	MEK
Sep-14-06	Telephone conference with Co-Defendant's counsel re: responses to DeGroot Rule 25(c) motion (0.3).	0.30	37.50	MEK
	Prepare pre-trial report to Company (2.2); telephone call with Insured re: case status (0.2).	2.40	300.00	MEK
Sep-15-06	Revise and final brief in Opposition to Motion for Protective Order (1.5); receipt and review conformed copy of Court's Order to Shorten Time re: Plaintiff's Motion to Substitute and Motion for Protective Order (0.1); revise and final pre-trial report (0.8); letter to Company with pre-trial report (0.1).	2.50	312.50	MEK
Sep-18-06	Review and revise brief and Affidavit in Opposition to Plaintiff's Rule 25(c) Motion to Substitute (1.2).	1.20	150.00	MEK
	Review file in preparation for oral argument opposing Plaintiff's motions (0.5).	0.50	52.50	PMD

Sep-19-06	Telephone conference with Insured's expert re: availability for trial, review of case (0.2).	0.20	21.00	PMD
	Further review in preparation for oral argument on Plaintiffs' motions (1.0).	1.00	105.00	PMD
Sep-20-06	Telephone conference with counsel for Co-Defendant (0.2); continue review of pleadings and file (0.3); outline oral argument in opposition to Plaintiffs' motions (2.0).	2.50	262.50	PMD
Sep-21-06	Review and analysis of case law re: standing by third-party plaintiff who has not answered original complaint (1.0); appear and argue in opposition to Plaintiffs' Motions for Protective Order and Motion for Substitution (3.0); prepare memorandum re: same (0.5).	4.50	472.50	PMD
Sep-25-06	Email correspondence with Company re: pre-trial report and scheduling of roundtable (0.1).	0.10	12.50	MEK
	Review and analysis of issues for possible summary judgment and preparation of memorandum re: summary judgment issues (2.9).	2.90	304.50	RCP
Sep-26-06	Various email correspondence with Plaintiff's counsel re: rescheduling of parties' depositions (0.4); prepare briefing re: Motion for Summary Judgment re: Third Party Complaint (2.8).	3.20	400.00	MEK
Sep-27-06	Telephone call with Court re: rescheduling pre-trial conference (0.1); telephone call with Co-Defendant's counsel re: rescheduling of Plaintiff/Third Party Plaintiff depositions (0.2); telephone call with Third Party Plaintiffs' personal counsel re: pretrial motions/ assignment of claims/ Client 's exposure (0.3); receipt and review executed Satisfaction of Judgment re: Stipulated Judgment from Court (0.1).	0.70	87.50	MEK
Oct-02-06	Receipt and review Notice of Pre-trial Conference from Court (0.1); receipt and review Notice of Deposition of W. Novinger (0.1); review and analysis of Plaintiff's economic damage claim re: determination to present retained expert as witness and parameters of Motion in Limine regarding damages (0.9); review depositions of Plaintiffs re: economic damage claim (0.8); review and revision of Summary Judgment briefing (1.6); review and analysis of Idaho law re: than a negligent breach of contract to establish a tort claim (1.8).	5.30	662.50	MEK

Oct-03-06	Prepare Motion for Protective Order re: expert deposition and Motion for Sanctions re: cancelled depositions (0.9); prepare Affidavit in Support of Motions (0.4); prepare Motion Ordering Shortening of Time (0.2); prepare proposed Order re: denial of Plaintiff's Rule 25(c) Motion (0.1); letter to Court with proposed Order (0.1); continue review of Plaintiffs' previous depositions re: use in Motion for Summary Judgment briefing(1.4); continue review and revision Motion for Summary Judgment briefing (1.5); additional case law review on tort action for negligence arising out of a breach of contract (1.3).	5.90	737.50	MEK
Oct-04-06	Revise Motion for Sanctions (0.6); review file in preparation for roundtable meeting with Company (1.2); additional drafting of summary judgment memorandum re: negligent breach of contract (5.5).	7.30	912.50	MEK
Oct-05-06	Travel to/from and attend roundtable conference with Company (1.7); telephone call with Plaintiff's counsel re: depositions and settlement proposal (0.2); receipt and review email correspondence from Plaintiff's counsel re: Motion for Reconsideration of Motion on Substitute (0.1); email correspondence with Plaintiff's WA counsel re: Motion for Reconsideration of Motion to Substitute, Defendant's Motion for Protective Order/Sanctions and pending Motion for Summary Judgment (0.3); additional drafting re: summary judgment memorandum re: negligence claim barred by the applicable statute of limitations and by economic loss rule (3.8).	6.10	762.50	MEK
Oct-06-06	Receipt and review Plaintiff's Motion for Reconsideration of Motion to Substitute, Notice of Hearing and Affidavit in Support (0.8); review previously prepared jury instruction re: necessary revisions and modifications (2.4).	3.20	400.00	MEK
	Review and analysis of Defendant's Memorandum in Support of Motion for Summary Judgment in case of Kimbrough v. Reed re: applicability to Motion for Summary Judgment on Idaho Consumer Protection Act cause of action (1.4).	1.40	98.00	TAV

Oct-09-06	Prepare Motion for Order Shortening Time re: Motion for Protective Order (0.1); prepare proposed Order granting Motion to Shorten Time (0.1); receipt and review correspondence from Plaintiff's counsel with Motion to Shorten Time and proposed Order re: Motion for Reconsideration (0.2); review file re: necessary revisions/modifications pre-trial briefing and trial preparations (3.0); review additional caselaw re: Plaintiff's Motion for Reconsideration Motion to Substitute (1.3).	4.70	587.50	MEK
Oct-10-06	Prepare response brief to Plaintiffs' Motion to Reconsider Ruling on Motion to Substitute (1.5); review Plaintiff expert report in preparation of conference with Insured's engineer (0.8); telephone conference with Travis Katner re: Plaintiff expert report (0.4); continue file review re: trial preparation (2.5); revise negligence summary judgment argument (1.5); review statute of limitation argument on remaining UCC/Contract claims (1.2).	7.90	987.50	MEK
Oct-11-06	Prepare for and attend hearings re: Plaintiff's Motion to Reconsider Motion to Substitute and Insured's Motion for Sanctions and Motion for Protective Order (5.8) ; draft summary judgment argument on remaining UCC/Contract claims, and Idaho Consumer Protection Act claim (3.5).	9.30	1,162.50	MEK
	Review Plaintiff's economist's report and Plaintiff's dairy assessment report in preparation for telephone conference with Insured's expert (0.7); telephone conference with Insured's expert re: review and analysis of Plaintiffs' experts' reports (0.3); review deposition of Tom Storm in preparation of deposition outline for Dennis Burke (0.3).	1.30	136.50	PMD
Oct-12-06	Telephone call with Court re: trial setting (0.1); telephone call with Insured re: vacation of trial and Plaintiff's expert report (0.2); review and analysis of statute of limitations applicable to a UCC rescission claim (1.5).	1.80	225.00	MEK

Oct-13-06	Letter to Court re: resetting of trial (0.1); letter to counsel re: confirmation of depositions (0.1); prepare proposed Order re: vacation of trial (0.1); preparation for deposition of Charles Degroot (2.5) ; telephone call with Court re: vacation of pre-trial conference (0.1); telephone conversation with Plaintiff's counsel re: vacation of scheduled pre-trial conference (0.1); receipt and review correspondence from Plaintiffs' counsel with proposed Order Granting Plaintiffs' Motion to be Substituted in as Third Party Plaintiff (0.1).	3.10	387.50	MEK
	Telephone conference with Insured's expert (0.3).	0.30	31.50	PMD
Oct-16-06	Attend and take deposition of Charles DeGroot (3.3).	3.30	412.50	MEK
Oct-17-06	Telephone call with Insured re: case status/ Beltman depositions (0.2); telephone call with Co-Defendant counsel re: scheduled pre-trial conference (0.1); receipt and review correspondence from Plaintiffs' counsel re: missing fax pages (0.1).	0.40	50.00	MEK
	Telephone and email contact with Insured's expert re: setting meeting to review his analysis of Plaintiff's economic and environmental reports (0.2).	0.20	21.00	PMD
Oct-19-06	Email correspondence to Plaintiffs' counsel and Beltman's counsel re: deposition availability (0.1).	0.10	12.50	MEK
Oct-20-06	Receipt, review and send various emails among counsel of record and Beltman's WA counsel re: scheduling of Stan and Tom Beltman's depositions (0.5).	0.50	62.50	MEK
Oct-25-06	Telephone call with Co-Defendant's counsel re: Beltman depositions (0.1); draft Request for Production of Documents to Plaintiffs re: communication between DeGroot and Beltman (0.4); receipt and review Order granting Plaintiffs' Motion to Substitute as Third Party Plaintiffs (0.1).	0.60	75.00	MEK
Oct-29-06	Revise summary judgment argument brief, inserting rescission argument (2.1).	2.10	262.50	MEK
Oct-31-06	Telephone call with Plaintiff's counsel re: Court's request for available trial dates (0.1); receipt and review email correspondence from Plaintiff's counsel re: potential trial dates (0.1); receipt and review Notice of Withdrawal of Counsel for dismissed Defendant, Scott Standley (0.1).	0.30	37.50	MEK

Review documents sent to Insured's expert in preparation for meeting to discuss his assessment and opinions (0.4).

0.40

42.00

PMD

Totals

129.90

\$15,072.00**FEE SUMMARY**

Lawyer/Paralegal	Hours	Effective Rate	Amount
Michael E. Kelly	99.80	\$125.00	\$12,475.00
Randall C. Probasco	2.90	\$105.00	\$304.50
Peg M. Dougherty	11.10	\$105.00	\$1,165.50
Todd Van Horn	16.10	\$70.00	\$1,127.00

DISBURSEMENTS**Disbursements****Receipts**

Aug-07-06	Copying Correspondence/ Pleading 54 @ 0.10	5.40
	Copying Pleading 100 @ 0.10	10.00
Aug-09-06	Tom Storm - Deposition Travel Fee	25.81
	Dean Morrison - Deposition Travel Fees	31.26
	Copying Pldgs 128 @ 0.10	12.80
Aug-10-06	Copying Corr/Pldg 18 @ 0.10	1.80
Aug-23-06	Tri-County Process Serving - Invoice #48622 - Service Upon Tom Storm - 8/19/06	109.50
	Tri-County Process Serving - Invoice #48621 - Service Upon Dean Morrison - 8/14/06	84.00
	Copying Pleading 40 @ 0.10	4.00
	Copying Pleading/ Correspondence 20 @ 0.10	2.00
Sep-10-06	Copying Exhibits (Deposition) 36 @ 0.10	3.60
Sep-11-06	Copying Exhibits (Deposition) 147 @ 0.10	14.70
Sep-12-06	Copying - Pleading 95 @ 0.10	9.50
Sep-16-06	Telephone - Long Distance 1 @ 0.10	0.10
	Telephone - Long Distance 11 @ 0.14	1.54
Sep-19-06	Copying Correspondence and Pleading 96 @ 0.10	9.60

Invoice #: 3842

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November 8, 2006

Sep-21-06	M&M Court Reporting Service, Inc. - Invoice #15462B5 - Job No. 12513B4 - Discussion on the Record - Stan Beltman	89.50	
Oct-10-06	Copying - Pleading 23 @ 0.10	2.30	
Oct-16-06	Telephone - Long Distance 51 @ 0.11	5.61	
Oct-26-06	Copying - Correspondence and Pleading 30 @ 0.10	3.00	
Oct-30-06	Copying - Pleadings 9 @ 0.10	0.90	
		<hr/>	<hr/>
Totals		\$426.92	\$0.00
			<hr/>
	Total Fees & Disbursements Due this Billing Cycle		\$15,498.92
	Previous Balance		\$4,402.54
	Previous Payments		\$4,402.54
			<hr/>
	Balance Forward + Current Balance = Total Now Due		\$15,498.92

02000160

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TIN: 82-0536194

CWG CLAIMS - RMR

APR 18 2007

Continental Western Group
3320 East Goldstone Way
Meridian, ID 83642

April 6, 2007

CWG CLAIMS - RMR

Attn: Robert Conner

APR 10 2007

RE: DeGroot v. Standley, et al.

HLK File #: 2531017
HLK Inv. #: 4075

Client File/Claim Number: 11F500652

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-01-06	Telephone call with Beltman's WA counsel re: scheduling of depositions (0.1); email correspondence to counsel of record re: Beltman deposition dates (0.1).	0.20	25.00	MEK
Nov-02-06	Receipt and review Notice from Court of Pre-Trial and Trial Settings (0.1); receipt and review email correspondence from Co-Defendant's counsel re: Beltman depositions (0.1); email correspondence to Beltman's counsel re: depositions (0.1).	0.30	37.50	MEK
Nov-07-06	Telephone conference with Gooding County Courthouse re: status of request for pleading in related case (0.3).	0.30	21.00	TAV
Nov-08-06	Telephone call with Co-Defendant's counsel re: availability for Beltman deposition (0.1).	0.10	12.50	MEK
Nov-14-06	Telephone call with Co-Defendant's counsel re: availability for Beltman depositions (0.1); email correspondence to Beltman's WA counsel re: scheduling Beltmans' depositions (0.1); prepare Amended Deposition Notice Duces Tecum re: Tom Beltman (0.1); prepare Amended Deposition Notice Duces Tecum re: Stan Beltman (0.1).	0.40	50.00	MEK
	Telephone conference with Insured's expert rescheduling review meeting (0.1).	0.10	10.50	PMD
Nov-15-06	Review data from retained expert re: Plaintiff's consequential loss claim (1.6).	1.60	200.00	MEK

	Review Plaintiffs' expert report in preparation for meeting with Insured's expert (2.1); meeting with Insured's expert on Plaintiffs' economic loss report and environmental report and overall damages claims (3.2).	5.30	556.50	PMD
Nov-16-06	Letter to Court with deposition notices re: Tom and Stan Beltman (0.1).	0.10	12.50	MEK
Nov-17-06	Follow-up telephone conference with Insured's expert re: additional factor causing loss of milk production (0.1).	0.10	10.50	PMD
Nov-29-06	Receipt and review DeGroot responses to Insured's Second Request for Production of Documents (0.5); receipt and review correspondence from court reporter re: non-execution of deposition verification by Chuck DeGroot (0.1).	0.60	75.00	MEK
Nov-30-06	Prepare for depositions of Tom and Stan Beltman (3.6); telephone call with Co-Defendant's counsel re: Plaintiffs' discovery responses and upcoming depositions (0.3); letter to Insured re: Plaintiff's discovery responses (0.1).	4.00	500.00	MEK
Dec-01-06	Receipt and review email correspondence from Third Party Plaintiffs re: scheduled depositions (0.1); telephone call with counsel for Third Party Plaintiffs re: scheduled depositions (0.1).	0.20	25.00	MEK
Dec-04-06	Further preparations for depositions of Stan and Tom Beltman (1.3); attend and take deposition of Tom Beltman (1.7); attend and take deposition of Stan Beltman (2.8).	5.80	725.00	MEK
Dec-08-06	Telephone call with Insured re: Beltman depositions (0.2).	0.20	25.00	MEK
Dec-18-06	Review applicable case law re: the effect of a filed satisfaction of judgment on an assignment in support of Motion for Summary Judgment argument (0.9).	0.90	94.50	HLC
Dec-19-06	Review case law re 'Covenant not to Execute' and continue reviewing case law on satisfaction of judgment (1.8).	1.80	189.00	HLC
Dec-20-06	Email correspondence from and to Company re: trial date (0.1).	0.10	12.50	MEK
Dec-21-06	Review applicable case law in support of Motion for Summary Judgment argument re: extinguishment of assignment of rights against a third party (2.2).	2.20	231.00	HLC
Dec-26-06	Issue analysis re: Plaintiff's Assignment and Satisfaction of Judgment in relation to claim against Insured (3.4).	3.40	357.00	HLC

Jan-02-07	Receipt and review correspondence from court reporter with deposition transcript of Stan Beltman testimony (0.2); receipt and review correspondence from court reporter with deposition transcript of Tom Beltman testimony (0.1); receipt and review email correspondence from Plaintiff's counsel re: additional deposition date (0.1).	0.40	50.00	MEK
Jan-05-07	Letter to Plaintiff's counsel re: expert depositions (0.1); letter to Plaintiff's counsel re: expiration of offer (0.1).	0.20	25.00	MEK
Jan-16-07	Review Plaintiffs' expert's written report and the Northwest Dairy Association's reports in preparation of discovery requests (2.0); prepare Insured's Third Set of Request for Production of Documents (0.4).	2.40	252.00	HLC
Jan-17-07	Review draft of Insured's Third Set of Request for Production of Documents (0.8).	0.80	84.00	HLC
Jan-18-07	Telephone call with Plaintiff's counsel re: Dennis Burke deposition (0.1); telephone call with Co-Defendant counsel re: Dennis Burke deposition (0.1); prepare amended deposition notice re: Dennis Burke (0.1).	0.30	37.50	MEK
Jan-22-07	Receipt and review email from Plaintiff's counsel re: expert, Dennis Burke deposition cost (0.1).	0.10	12.50	MEK
Jan-23-07	Review notes from expert discussions and prepare list of significant events for time line (0.8).	0.80	84.00	PMD
Jan-24-07	Review, revise and final Insured's Third Request for Production of Documents to Plaintiff's (0.8); letter to Plaintiff's expert with deposition fee (0.1); telephone call with consultant re: review of Dennis Burke report (0.1).	1.00	125.00	MEK
	Review deposition of Ernest and Charles DeGroot re: production reports (0.8); revise final discovery requests to Plaintiff's DeGroot (1.3).	2.10	220.50	PMD
Jan-25-07	Telephone call with engineer, Travis Kator re: Dennis Burke deposition and report (0.1); letter to Travis Kator with Burke report (0.1).	0.20	25.00	MEK
	Begin preparing timeline of events (3.3); prepared line summary of Charles DeGroot's October 16, 2006 Deposition (1.5).	4.80	504.00	HLC
Jan-26-07	Receipt and review correspondence from Plaintiffs' counsel with a copy of Dennis Burke's Amended DeGroot Dairy assessment report (1.2).	1.20	150.00	MEK

Jan-29-07	Prepare exhibits to utilize at Dennis Burke deposition (2.2); receipt and review correspondence from Court Reporter with original deposition transcript of Stan Beltman (0.2).	2.40	300.00	MEK
	Prepare line summary of Tom Beltman's December 2006 deposition (0.6); prepare line summary of Stan Beltman's December 2006 deposition (2.1).	2.70	283.50	HLC
Jan-30-07	Telephone call with Insured re: Dennis Burke deposition (0.1); letter to Insured with Burke report (0.1); telephone call with Travis Kator re: review of Burke report (0.2); preparation for deposition of Plaintiff's retained expert Dennis Burke (6.5); receipt and review correspondence from Court Reporter with original deposition transcript of Thomas Beltman (0.2).	7.10	887.50	MEK
	Complete draft of events timeline (0.7); revise line summary of DeGroot's 2006 deposition for use at Dennis Burke's deposition (0.8).	1.50	157.50	HLC
Jan-31-07	Continue preparations for deposition of Plaintiff's/Third Party Plaintiff's retained expert Dennis Burke (1.3); attend and take deposition of Dennis Burke (5.6); prepare discovery request re: Request for Entry of Land (0.2); telephone call with Insured re: Dennis Burke deposition (0.2); email correspondence with Travis Kator re: assessment of Burke report (0.5).	7.80	975.00	MEK
Feb-06-07	Telephone conference with Insured's expert re: readable copies of reports from Plaintiff's expert (0.3).	0.30	31.50	PMD
Feb-07-07	Revise Memorandum in Support of Motion for Summary Judgment (4.5).	4.50	562.50	MEK
	Revise narrative and line summaries of Tom Beltman's deposition (0.8).	0.80	84.00	HLC
	Prepare follow-up correspondence to Insured's expert re: requests for additional information (0.1).	0.10	10.50	PMD
Feb-12-07	Telephone call with new adjuster assigned to case re: case status (0.2); receipt and review correspondence from Plaintiff's counsel with settlement demand (0.1); continue revision and update of Memorandum in Support of Motion for Summary Judgment with testimony of Third Party Plaintiff's (1.7).	2.00	250.00	MEK
Feb-14-07	Status Report to Company (0.3).	0.30	37.50	MEK

Feb-15-07	Revise and final deposition reports re: Tom and Stan Beltman and Dennis Burke (1.3); receipt and review email correspondence re: Idaho engineering license of Dennis Burke (0.1); email correspondence with Co-Defendant counsel re: ID engineering license of Dennis Burke (0.1); prepare Affidavit of Counsel in Support of Motion for Summary Judgment (0.8); revise Memorandum in Support of Motion for Summary Judgment (1.9).	4.20	525.00	MEK
	Telephone message to Idaho State Board of Professional Engineers re: current status of Dennis Burke (0.1); telephone conference with Idaho State Board of Professional Engineers re: current status of Dennis Burke (0.1); receipt and review email correspondence from Idaho State Board of Professional Engineers stating Dennis Burke's engineering license lapsed on October 31, 2003 (0.1).	0.30	21.00	TAV
Feb-16-07	Receipt and review correspondence from court reporter with transcript of deposition of Dennis Burke (0.2).	0.20	25.00	MEK
Feb-20-07	Telephone call with Company re: case status (0.6); review and revise Affidavit of Counsel in Support of Motion for Summary Judgment (0.3); revise and final Brief in Support of Motion for Summary Judgment (1.6); letter to Court with Motion for Summary Judgment (0.1).	2.60	325.00	MEK
	Prepare deposition line summary of Dennis Burke's January 31, 2007 deposition (0.8).	0.80	84.00	HLC
Feb-21-07	Final preparing Line Summary of Dennis Burke's January 31, 2006 deposition (1.5).	1.50	157.50	HLC
Feb-26-07	Telephone call with Co-Defendant counsel re: site inspection and Plaintiffs' outstanding discovery documents (0.1).	0.10	12.50	MEK
Feb-27-07	Review memorandum re: outstanding requested documents from Dennis Burke deposition (0.1); letter to Plaintiff's counsel re: requested documents and scheduled inspection of DeGroot property (0.1).	0.20	25.00	MEK
Mar-06-07	Prepare a list of the documents, etc. requested from Mr. Burke during his deposition (0.5); review and revise draft of the line summary of Mr. Burke's deposition (1.5).	2.00	210.00	HLC

Mar-07-07	Receipt and review invoice from EAC re: review of Cyclus assessment (0.1); receipt and review Plaintiffs' Response in Opposition to Motion for Summary Judgment and Affidavit in Response (1.7).	1.80	225.00	MEK
	Review the case law relied upon by the Plaintiff in his Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment in preparation for reply (1.3).	1.30	136.50	HLC
Mar-08-07	Status report to Company (0.1); letter to Insured re: Plaintiffs' dairy inspection (0.1).	0.20	25.00	MEK
	Continue to review and analyze case law relied on by Plaintiff in his Memorandum in Opposition to Standley's Motion for Summary Judgment (3.0).	3.00	315.00	HLC
	Review summary judgment memorandum (0.3); review and analysis of Plaintiff's Opposition Memorandum in preparation of outline of Reply Memorandum (0.6); initial preparation of outline of Reply Memorandum (0.6).	1.50	157.50	PMD
Mar-09-07	Email correspondence from Company re: dairy inspection (0.1); telephone call with Houle counsel re: dairy inspection and Plaintiff's Motion for Summary Judgment response (0.2); telephone call with Insured re: dairy inspection (0.1).	0.40	50.00	MEK
	Continue to analyze case law in preparation for Reply Brief to Plaintiffs' Memorandum in Opposition (2.5).	2.50	262.50	HLC
Mar-12-07	Telephone call with Houle counsel re: site inspection (0.1); letter to Houle counsel re: directions to DeGroot dairy (0.1); receipt and review correspondence from Plaintiff's counsel re: Burke deposition documents, inspection of DeGroot dairy and outstanding discovery (0.1).	0.30	37.50	MEK
	Continue preparation of outline of reply memorandum (0.5); review and flag pertinent deposition testimony in support of summary judgment on negligence claim (1.7); analysis of case law and treatise re: third-party pleading (0.6); research and analysis to support argument that negligence claim should be dismissed on basis of economic loss rule (0.7).	3.50	367.50	PMD
Mar-13-07	Travel to Melba, ID re: inspection of Plaintiff's dairy (0.8); inspect Plaintiff's dairy with Insured, Houle counsel and Houle representative (2.2); return travel to Boise (0.8); review and revise Reply Brief in Support of Motion for Summary Judgment (0.7).	4.50	562.50	MEK

	Continue preparation of reply memorandum including: Further argument on application of 4 year limitation to negligence cause of action (0.8); research case law re: savings clause of UCC Statute of Limitations (0.8); draft argument against application of the savings clause (0.5); draft argument re: exclusion of all claims based on Satisfaction of Judgment (0.7).	2.00	210.00	PMD
Mar-14-07	Review, revise and final Reply Brief in Support of Motion for Summary Judgment (2.3); revise and final Affidavit of Counsel in Support (0.4).	2.70	337.50	MEK
Mar-15-07	Telephone call with Company re: inspection of dairy and scheduling of roundtable conference (0.1).	0.10	12.50	MEK
Mar-16-07	Telephone call with Company re: dairy inspection and roundtable conference (0.1); email correspondence with Company re: roundtable (0.1); letter to Company with photographs of Plaintiffs' dairy (0.1); prepare supplemental pre-trial report (1.3).	1.60	200.00	MEK
Mar-20-07	Research and analysis of case law re: improvements to real property as relates to statute of limitations (1.7); further research on savings clause provision of UCC Statute of Limitation (1.5); prepare outline of possible argument that Third Party Plaintiff's cause of action is for improvement to real property and savings clause under the UCC (1.0).	3.20	336.00	PMD
Mar-21-07	Continue preparations for hearing re: Motion for Summary Judgment (1.6); travel to Canyon County Courthouse for hearing (0.8); attend and argue hearing re: Motion for Summary Judgment (1.8); receipt and review Co-Defendant Houle's Motion for Summary Judgment re: Third Party Complaint (0.2); return travel to Boise (0.8); telephone call with Company re: Motion for Summary Judgment hearing (0.2).	5.40	675.00	MEK
	Review case law on the 'Savings Clause' of the UCC in preparation for brief (1.6).	1.60	168.00	HLC
	Review cases related to UCC goods vs. services (0.7).	0.70	73.50	PMD

Mar-22-07	Prepare for telephonic conference with Company (0.5); participate in Company telephonic conference call (0.5); telephone call with Co-Defendant's counsel re: hearing re: Co-Defendant's Motion for Summary Judgment (0.1); status report to Company re: Insured's Motion for Summary Judgment hearing (0.1). Continue to review case law re: savings clause of UCC (1.3).	1.20 1.30	150.00 136.50	MEK HLC
Mar-23-07	Receipt and review Notice of Hearing re: Co-Third Party Defendant Houle's Motion for Summary Judgment (0.1). Continue research and analysis of case law re: good vs. services and application of UCC (1.4).	0.10 1.40	12.50 147.00	MEK PMD
Mar-26-07	Telephone call with Insured re: Motion for Summary Judgment hearing and assumption of defense by Houle (0.3); receipt and review correspondence from court reporter with original deposition transcript of Dennis Burke and change sheet (0.2). Continue reviewing case law and review treatises on the savings clause of the UCC (2.5). Continue research and analysis of relevant case law supporting claim that Plaintiff's claim falls within the Uniform Commercial Code for Sales in preparation of supplemental brief requested by Court (2.5).	0.50 2.50 2.50	62.50 262.50 262.50	MEK HLC PMD
Mar-27-07	Prepare analysis of savings clause under the UCC (1.6). Preparation of brief in response to court's request re: UCC status of Third-Party Plaintiff's claims, inapplicability of savings clause and further argument on issue of <i>Satisfaction of Judgment</i> (4.7).	1.60 4.70	168.00 493.50	HLC PMD
Mar-28-07	Continue reviewing law reviews, statute annotations and other authority re contract of sales v. contract of goods clause (3.0). Further research and analysis of hybrid transactions and the application of the UCC (2.5).	3.00 2.50	315.00 262.50	HLC PMD
Mar-29-07	Review and revise supplemental briefing re: UCC application to Plaintiffs' claims (1.3). Continue preparation of draft of supplemental brief including pertinent facts from depositions, documents produced, and previous pleadings (1.5); analysis of hybrid cases with facts of this case (3.8).	1.30 5.30	162.50 556.50	MEK PMD

Mar-30-07	Revise and final supplemental briefing re: UCC and savings clause Motion for Summary Judgment issues (1.7); revise and final Affidavit in Support of Supplemental Briefing (0.1); letter to Court with briefing (0.1); receipt and review Plaintiff's Supplemental Motion for Summary Judgment briefing and cited caselaw re: Satisfaction of Judgment (1.8).	3.70	462.50	MEK
	Continue drafting section of brief on application of UCC to Insured's contract with Third-Party Plaintiff (1.1); review and analysis of ALR and cited cases re: application of savings clause to different plaintiffs and defendants (1.3); draft section of supplemental brief pertaining to savings clause (1.3).	3.70	388.50	PMD
Totals		155.00	\$17,698.00	

FEE SUMMARY

Lawyer/Paralegal	Hours	Effective Rate	Amount
Michael E. Kelly	72.20	\$125.00	\$9,025.00
Heather L. Conder	42.40	\$105.00	\$4,452.00
Peg M. Dougherty	39.80	\$105.00	\$4,179.00
Todd Van Horn	0.60	\$70.00	\$42.00

DISBURSEMENTS

		Disbursements	Receipts
Nov-16-06	Copying - Correspondence and Pleading 23 @ 0.10	2.30	
	Telephone - Long Distance 6 @ 0.15	0.90	
Dec-01-06	Copying - Deposition and Exhibit 220 @ 0.10	22.00	
Dec-05-06	Copying - Pleading 7 @ 0.10	0.70	
Dec-15-06	Telephone - Long Distance 2 @ 0.10	0.20	
Jan-16-07	Telephone - Long Distance 32 @ 0.11	3.52	
Jan-18-07	Copying - Correspondence and Pleading 19 @ 0.10	1.90	
Jan-24-07	Deposition Fees & Expenses for Expert - Dennis Burke, PE - DeGroot v. Standley, et al	2,991.00	
	Copying - Depositions 197 @ 0.10	19.70	
	Copying - Correspondence and Pleading 6 @ 0.10	0.60	

Jan-31-07	Copying - Exhibits 68 @ 0.10	6.80	
Feb-07-07	Copying - Pleading 6 @ 0.10	0.60	
Feb-14-07	Intermountain Agricultural Services - DeGroot Litigation - Professional Services 10-11-06 - 11/15/06 - SS [REDACTED]	4,728.75	
Feb-16-07	Telephone - Long Distance 25 @ 0.14	3.50	
Feb-20-07	Copying - Depositions 97 @ 0.10	9.70	
Feb-21-07	Copying - Correspondence and Pleading 350 @ 0.10	35.00	
Feb-27-07	M&M Court Reporting Service, Inc. - Invoices #16786B5 & #16801B5	793.56	
	Copying - Pleading 4 @ 0.10	0.40	
Mar-07-07	Copying - Pleading 17 @ 0.10	1.70	
Mar-14-07	Travel Expense Reimbursement - Michael E. Kelly - Dairy Inspection - Melba, ID - 3/13/07 - Travel	32.98	
	Copying - Correspondence, Pleadings and Exhibits 156 @ 0.10	15.60	
	Copying - Correspondence, Pleading and Exhibits 156 @ 0.10	15.60	
Mar-15-07	Outside printing - Color Copies of Photographs 38 @ 1.00	38.00	
Mar-29-07	Copying - Pleadings 140 @ 0.10	14.00	
Mar-30-07	Copying - Pleading 6 @ 0.10	0.60	
	Totals	\$8,739.61	\$0.00
	Total Fees & Disbursements Due this Billing Cycle		\$26,437.61
	Previous Balance		\$15,498.92
	Previous Payments		\$15,498.92
	Balance Forward + Current Balance = Total Now Due		\$26,437.61

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Continental Western Group
3320 East Goldstone Way
Meridian, ID 83642

May 15, 2007
May 20, 2007

Attn: Robert Conner

RE: DeGroot v. Standley, et al.

HLK File #: 2531017
HLK Inv. #: 4159

Client File/Claim Number: 11F500652

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-02-07	Letter to Insured re: case status post Motion for Summary Judgment (0.1).	0.10	12.50	MEK
	Analysis of Plaintiff's supplemental brief on issue of satisfaction of judgment (1.2).	1.20	126.00	PMD
Apr-03-07	Analysis of case cited by Plaintiffs in support of position re: Satisfaction of Judgment (0.8); review and analysis of case law and statutes re: assignments and satisfaction of judgment in preparation of reply to Plaintiffs' supplemental brief (2.5).	3.30	346.50	PMD
Apr-04-07	Telephone call with Insured re: indemnification by Houle (0.2); telephone call with Company re: resetting of pre-trial conference (0.1).	0.30	37.50	MEK
	Review and analysis of indemnification and subrogation relationships as alleged by Plaintiffs and further preparation of Supplemental Reply memorandum (3.1).	3.10	325.50	PMD
Apr-05-07	Revise and final supplemental briefing re: satisfaction of judgment argument (1.8).	1.80	225.00	MEK
	Review and revise supplemental reply memorandum (1.7).	1.70	178.50	PMD
Apr-09-07	Receipt and review Plaintiff's brief in response to UCC briefing and Motion to Strike Affidavit of Counsel re: Insured's briefing (0.8); receipt and review correspondence from Plaintiff's counsel with proposed trial exhibit and witness list (0.5).	1.30	162.50	MEK
	Review prior testimony by parties in preparation of response to Plaintiffs Motion to Strike (1.9).	1.90	199.50	HLC

Apr-10-07	Continue reviewing testimony submitted to the Court and summarize in preparation for Standley's response to Plaintiffs Motion to Strike (0.9).	0.90	94.50	HLC
	Review response to discovery re: witness disclosure (0.7); review depositions in effort to identify potential witnesses (0.9); prepare memorandum re: witness and exhibit disclosure and Plaintiffs witnesses (0.9).	2.50	262.50	PMD
Apr-13-07	Receipt and review Plaintiff's Objection to Timeliness of Houle's Motion for Summary Judgment and Request for Attorney Fees(0.3); <u>prepare for pre-trial conference</u> (1.2).	1.50	187.50	MEK
	Prepare Disclosure of Trial Exhibits (1.8).	1.80	189.00	PMD
Apr-16-07	Travel to Canyon County Courthouse re: pre-trial conference (0.8); attend pre-trial conference (1.4); return travel to Boise (0.8); telephone call with Company re: pre-trial conference (0.1); letter to Company re: pre-trial/case status (0.1); telephone call with Insured re: case status/trial preparation (0.7); receipt and review email correspondence from Plaintiff's counsel re: outstanding discovery from prior litigation (0.1); email to Plaintiff's counsel re: response to email (0.1).	4.10	512.50	MEK
	Telephone conference with Insured's private counsel re: status of summary judgment issues (0.2).	0.20	21.00	PMD
Apr-17-07	Review Court's instructions for pre-trial submissions of memorandum, trial witnesses and exhibits, stipulated facts, jury instructions and pre-trial motions (0.5); prepare pre-trial memorandum (2.0).	2.50	262.50	PMD
	Review and analyze file in preparation of drafting portions of Motion in Limine to exclude Hooper and Burke testimony and prepare jury instructions (1.4); review and analyze caselaw re: consequential damages in order to determine if Burke and Hooper expert testimony is relevant to Beltman's contract claims (1.9); outline and analyze Motion in Limine to exclude Burke and Hooper's expert testimony (1.1).	4.40	462.00	JJB
Apr-18-07	Receipt and review memorandum from Court re: Houle's Motion for Summary Judgment (0.1); letter to Client re: identifying DeGroot Diary photographs for trial (0.1); review, revise and update anticipated trial exhibits (2.3).	2.50	312.50	MEK

	Review case law on consequential damages relating to whether DeGroot's alleged damages were foreseeable to contracting parties (2.4).	2.40	252.00	HLC
	Continue preparation of pre-trial memorandum (6.8).	6.80	714.00	PMD
	Continue review and analysis of Assignment from Beltman to DeGroot, Settlement Agreement, and Satisfaction of Judgment as to how relates to Motion in Limine to exclude expert testimony of Hooper and Burke (0.7); continue review and analyze of UCC law re: remedies, including consequential damages, in furtherance of drafting portion of Motion in Limine to exclude all or part of Burke and Hooper testimony (2.1); research and analyze law re: assignability of third-party claims as it relates to what evidence plaintiff/third-party plaintiff can seek to introduce at trial in furtherance of determining basis of Motion in Limine (0.3); draft Memorandum in Suoport of Motion in Limine (2.4).	5.50	577.50	JJB
	BPrepare trial exhibits notebooks (3.5); revise Third-Party Defendant Standley Trenching, Inc., d/b/a/ Standley & Company's, Disclosure of Trial Exhibits and index (1.5).	5.00	350.00	TAV
Apr-19-07	Continue review and prepare summary of case law re: consequential damages (4.6).	4.60	483.00	HLC
	Meet with counsel for Co-Defendant Houle (1.3); review breach of contract remedies under UCC (3.5); review criteria for effective revocation of accepted goods under UCC in preparation of pretrial memorandum (3.3); review depositions and pleadings to support pre-trial motion arguments re: expert disclosure and facts supporting exclusion (2.7).	10.80	1,134.00	PMD
	Continue drafting of Motion in Limine re: assignability of third party UCC claims (2.8).	2.80	294.00	JJB
	Continue revision and preparation of Third Party Defendant Standley Trenching, Inc., d/b/a Standley & Co.'s Disclosure of Trial Exhibits (3.7); prepare contact information for trial witnesses (0.6).	4.30	301.00	TAV

Apr-20-07	Review and revise Insured's Disclosure of Trial Witnesses, Disclosure of Trial Exhibits and pre-trial memorandum (3.5); receipt and review Co-Defendant Houle's pre-trial memorandum and witness and exhibit list (0.4); receipt and review Plaintiffs' Second Supplemental Responses to Insured's First Set of Interrogatories to DeGroot (0.9) receipt and review Plaintiff's Sixth Supplemental Responses to Insured's Request for Production of Documents (0.5).	5.30	662.50	MEK
	Review Plaintiffs' and Third Party Plaintiffs' supplemental discovery responses re: additional issues to include in pre-trial memorandum (6.3).	6.30	661.50	PMD
	Review and compare Plaintiff's Witness and Exhibit List with Second Supplemental Responses to Defendant Standley Trenching, Inc. First Set of Interrogatories to Plaintiff and Plaintiff's Sixth Supplemental Responses to Defendant Standley Trenching, Inc.'s Request for Production of Documents (0.2).	0.20	14.00	TAV
Apr-23-07	Prepare narrative summary of Plaintiffs' expert, Dennis Burke's deposition for use at trial (1.7).	1.70	178.50	HLC
	Telephone conference with counsel for Co-Defendant Houle re: planned conference with Third-Party Plaintiffs (0.6); review and compare new witness list from Plaintiffs with previously provided list (0.2); prepare list of model jury instructions for proposed jury instructions (1.8).	2.60	273.00	PMD
	Review and analyze whether damages available for 'rightful rejection' are same as for 'revoked acceptance' under UCC in furtherance of Motion in Limine on evidence re: system repair costs, system improvement costs, and future costs to repair (1.8); continue drafting Motion in Limine, including sections on 'damages limited to Beltman's third party claims, experts failure to produce underlying facts and data, and UCC limitations on Hoopes and Burke testimony (3.9).	5.70	598.50	JJB
	Review Plaintiffs' Revised Witness and Exhibit List (Dated 4/20/02) and compare with previous Plaintiff's Witness and Exhibit List for changes and additions (0.6); draft and revise deposition summary of Stan Beltman for use at trial (1.5).	2.10	147.00	TAV

Apr-24-07	Telephone call with Houle counsel re: vacation of hearing oh Houle's Motion for Summary Judgment (0.1); receipt and review correspondence from Plaintiff's counsel with proposed Order re: Insured's Motion for Summary Judgment (0.1); receipt and review copy of correspondence to Court from Plaintiff's counsel re: Houle's Motion for Summary Judgment (0.1); letter to Company with witness/exhibit list and pre-trial memorandum (0.1); receipt and review correspondence from Plaintiff's with revised witness and exhibit list and pre-trial memorandum (1.0); review pleadings, discovery and exhibits in preparation of proposed jury instructions (2.4).	3.80	475.00	MEK
	Prepare line summary of Chuck DeGroot's deposition, dated 10/16/06, for use at trial (2.2).	2.20	231.00	HLC
	Continue preparation of list of model jury instructions (1.5); research model UCC jury instructions from other jurisdictions for proposed jury instructions (2.2).	3.70	388.50	PMD
	X Review and analyze UCC law re: whether can exclude testimony re: damages if claimant claims 'accepted nonconforming goods' (0.7); continue drafting Motions in Limine, including those excluding Burke testimony re design of dairy, Hooper testimony re: costs to get system 'up to specifications,' milk production, and lost revenue (4.9).	5.60	588.00	JJB
	Begin deposition line summary of Tom Storm for use at trial (2.5).	2.50	175.00	TAV
Apr-25-07	Travel to Canyon County Courthouse (0.8); attend scheduled hearing re: Houle's Motion for Summary Judgment on Third Party Complaint (0.8); return travel to Boise (0.8): letter to Court re: Plaintiff's proposed Order re: Insured's Motion for Summary Judgment (0.1); receipt and review Notice from Court re: ruling that contract controlled by provisions of UCC (0.1).	2.60	325.00	MEK
	Continue preparation of Memorandum in Support of Motion in Limine (4.9); review deposition testimony to support Motion in Limine (0.5).	5.40	567.00	PMD
Apr-26-07	Receipt and review correspondence from Plaintiffs' counsel with proposed exhibit video tape of Plaintiffs' dairy (0.8).	0.80	100.00	MEK

	Preparation of Statement of Fact for Insured's Motion In Limine (2.2).	2.20	231.00	HLC
	Prepare Plaintiff's Trial Exhibits notebook (5.7).	5.70	399.00	TAV
Apr-27-07	Receipt and review correspondence from Plaintiff's counsel with Notice of Hearing, Motion for Reconsideration of Order Granting Motion for Summary Judgment to Insured, Affidavit of Counsel in Support, Motion for Order Shortening Time and proposed Order to Shorten Time (2.0); review and revise Memorandum in Support of Insured's Motion in Limine (2.7).	4.70	587.50	MEK
	Continue preparation of proposed <u>jury</u> instructions (6.3).	6.30	661.50	PMD
Apr-28-07	Continue revisions and additions to Memorandum and Motion in Limine (3.7).	3.70	388.50	PMD
Apr-29-07	Continue preparation of proposed pattern jury instructions (2.9).	2.90	304.50	PMD
Apr-30-07	Prepare Affidavit in Support of Motions in Limine (0.4); telephone call with Insured re: trial exhibits/anticipated testimony (1.0); trial preparation re: review and update Kurt Standley trial notebook (1.6); trial preparation re: review proposed jury instructions (2.2).	5.20	650.00	MEK
	<u>Review case law and past pleadings in preparation for Standley's response to Plaintiffs Motion to Reconsider and prepare draft (2.9).</u>	2.90	304.50	HLC
	Telephone conference with counsel for Houle re: Plaintiff's Motion in Limine and Memorandum Requesting Reconsideration (0.2); continue <u>research of UCC case law in support of jury instructions (0.5)</u> ; continue preparation of jury instructions (1.0).	1.70	178.50	PMD
	Review and analyze Standley's original Motion for Summary Judgment on savings clause, Plaintiff's Opposition Brief, Standley's and Plaintiff's post-hearing supplemental briefs on savings clause issues; review and analyze cases cited and discussed by parties in savings clause briefing in furtherance of drafting motion reconsideration and begin outlining Motion for Reconsideration on Savings Clause (3.4).	3.40	357.00	JJB
	<u>Final deposition line summary of Tom Storm (0.9)</u> ; prepare notebook re: Co-Defendant Houle's exhibits (1.0).	1.90	133.00	TAV

Totals

168.40 ~~-\$17,602.50~~

FEE SUMMARY

Lawyer/Paralegal	Hours	Effective Rate	Amount
Michael E. Kelly	34.00	\$125.00	\$4,250.00
Heather L. Conder	18.80	\$105.00	\$1,974.00
Peg M. Dougherty	66.50	\$105.00	\$6,982.50
John J. Browder	27.40	\$105.00	\$2,877.00
Todd Van Horn	21.70	\$70.00	\$1,519.00

DISBURSEMENTS

Disbursements

Receipts

Apr-05-07	Copying - Correspondence and Pleading 22 @ 0.10	2.20
Apr-06-07	Copying - Pleading 6 @ 0.10	0.60
Apr-16-07	Telephone - Long Distance 11 @ 0.13	1.43
Apr-18-07	Copying - Trial Exhibits 391 @ 0.10	39.10
	Copying - Color Printing 8 @ 1.00	8.00
Apr-19-07	Copying - Correspondence and Photographs 28 @ 0.10	2.80
	Copying - Depositions - Trial 148 @ 0.10	14.80
Apr-26-07	Copying - Trial Documents 211 @ 0.10	21.10
	Copying - Color Printing - Trial Documents 18 @ 1.00	18.00
Apr-27-07	Bridge City Legal - Invoice #B1618	92.40
	Copying - Trial Documents 1305 @ 0.10	130.50
	Copying - Color Printing - Trial Documents 68 @ 1.00	68.00
Apr-30-07	Copying - Pleadings 294 @ 0.10	29.40

Totals

\$428.33

\$0.00

Invoice #: 4159

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May 15, 2007

Total Fees & Disbursements Due this Billing Cycle	\$18,030.83
Previous Balance	\$26,437.61
Previous Payments	\$0.00
Balance Forward + Current Balance = Total Now Due	\$44,468.44

FILE COPY

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Continental Western Group
3320 East Goldstone Way
Meridian, ID 83642

July 13, 2007

Attn: Robert Conner

RE: DeGroot v. Standley, et al.

HLK File #: 2531017
HLK Inv. #: 4251

Client File/Claim Number: 11F500652

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
May-01-07	Review and revise Motion for Reconsideration on Court's denial of Motion on Summary Judgment re: savings clause (1.4); prepare Motion for Reconsideration, Notice of Hearing, Motion for Order Shortening Time to hear Motion and Proposed Order Shortening time for hearing (0.3); review and revise Memorandum in Opposition to Plaintiff's Motion for Reconsideration re: Motion for Summary Judgment decision (1.6); trial preparation re: review file interviews and deposition testimony of fact witnesses (3.2).	6.50	812.50	MEK
	Draft Motion for Reconsideration re: Court's ruling on savings clause (2.8); draft Motion to Shorten Time for hearing on Motion for Reconsideration (0.2); review case relied on by Court in denying Motion for Summary Judgment re: Statute of Limitations and prepare analysis supplement to filed with Motion for Reconsideration (1.5).	4.50	472.50	JJB
May-02-07	Telephone call with Insured re: trial preparations (0.8); receipt and review Court's Order on Insured's Motion for Summary Judgment (0.1); receipt and review Court's Order denying Plaintiff's Motion to Reconsider Order Granting Motion for Summary Judgment to Insured (0.2); receipt and review Order determining predominant factor of contract (0.1); receipt and review Order on pre-trial conference (0.1); trial preparations re: review of Parties' deposition testimony (4.5).	5.80	725.00	MEK

	Prepare line summary of Kurt Standley's deposition for trial (2.1).	2.10	220.50	HLC
May-03-07	Trial preparations re: review discovery responses of Plaintiff DeGroot and Third Party Plaintiff Beltman for use at trial (4.2); review file documents re: potential exhibits on cross examination (2.3).	6.50	812.50	MEK
	Review case law in further preparation of savings clause analysis for Hearing on Standley's Motion to Reconsider (2.1).	2.10	220.50	HLC
	Meeting with counsel for Houle re: jury instructions and Motion in Limine (0.3); continue analysis of case law to support jury instructions on UCC causes of action (1.7); continue preparation of jury instructions (1.2).	3.20	336.00	PMD
May-04-07	Trial preparations re: continue review of file documents re: potential exhibits on cross examination (1.8); outline of cross examination questions of Plaintiff, Charles DeGroot, and Third Party Plaintiffs, Tom and Stan Beltman (4.8); receipt and review Plaintiff's Opposition to Insured's Motion to Reconsider Order partially denying Motion for Summary Judgment and Plaintiff's Motion and Memorandum for Order certifying granting of Motion for Summary Judgment to Insured per IRCP 54(b) (0.7); email correspondence to Insured's counsel and Houle's counsel with Plaintiff's Rule 54(b) Motion (0.1); receipt and review court minute entry re: contract action to proceed under UCC (0.1); receipt and review Houle's Joinder in Insured's Motions in Limine (0.1).	7.60	950.00	MEK
	Continue research and preparation of proposed jury instructions (3.5); receipt and review Plaintiff's Opposition brief to Insured's Motion for Reconsideration on issue of UCC savings clause (0.4); prepare outline of oral argument on Motion for Reconsideration (1.3); review case law relied upon for reconsideration Motion (2.3).	7.50	787.50	PMD
May-05-07	Continue preparation of jury instructions (4.0); further research on UCC damages for warranty claims (0.7).	4.70	493.50	PMD
May-06-07	Continue preparation for hearing on Motions in Limine and Motion to Reconsider application of UCC statute of limitations (2.5); further research on savings clause in preparation for oral argument on reconsideration motion (1.5).	4.00	420.00	PMD

May-07-07	Trial preparations re: review of Parties' deposition testimony in preparation of direct and cross examination (7.5); email correspondence among counsel of record re: 54(b) certification and vacation of trial (0.1); receipt and review correspondence from Plaintiff's counsel to court re: vacation of trial (0.1).	7.70	962.50	MEK
	Travel to Canyon County court (0.9); attend hearing and argue Motion for Reconsideration on issue of applicability of UCC statute of limitations and Plaintiff's Motion for Final Judgment Certificate on court's previous summary judgment ruling in favor of Insured (2.5); travel from Canyon County (0.6); review IRCP 54 re: certificate from judgments and recent Idaho case law re: same (0.8); prepare draft Order and 54(b) certificate (0.6).	5.40	567.00	PMD
	Draft revision of Third Party Defendant Standley Trenching, Inc., d/b/a Standley & Co.'s Disclosure of Trial Exhibits (0.9); prepare Tom Storm trial notebook (3.8); prepare Jeff Griggs trial notebook (1.8).	6.50	455.00	TAV
May-08-07	Trial preparation re: review and revision of proposed jury instructions (5.8); receipt and review Plaintiff's proposed jury instructions re: first party action v. Houle (1.4).	7.20	900.00	MEK
	Prepare Troy Hartzell trial notebook (2.1).	2.10	147.00	TAV
May-09-07	Meet with client re: trial preparation (10.5).	10.50	1,312.50	MEK
	Revise line summary draft of Kurt Standley's deposition (0.8).	0.80	84.00	HLC
	Review summaries of previous witness interviews (0.4); contact witnesses to discuss testimony and alert them to trial dates (1.1); prepare updated summaries of expected witness testimony (0.7); further preparation for Motion in Limine oral argument (1.8).	4.00	420.00	PMD
	Prepare Charles DeGroot trial notebook (3.2); prepare Ernest DeGroot trial notebook (2.0).	5.20	364.00	TAV
May-10-07	Trial preparation re: telephone interview of Jeff Griggs (0.9); telephone interview of Troy Hartzell (1.4); continue outline of cross examination questions of Plaintiff, Third Party Plaintiffs and Insured (7.5); receipt and review Plaintiff's trial subpoena re: Jeff Griggs (0.1).	9.90	1,237.50	MEK

	Continue preparation for Motion in Limine argument (2.1); oral argument on Insured's Motion in Limine (2.0); review subpoenas and correspondence (0.3); continue telephone interviews of fact witnesses and prepare memorandums for trial re: expected testimony (1.5); review Plaintiff's Expert Ken Hooper report for purposes of drafting affidavit for Insured's expert re: lack of supporting documentation (0.5); telephone conference with Insured's expert re: same (0.2); draft affidavit for Insured's expert re: same (0.3); begin comparison of jury instructions submitted by parties (1.1).	8.00	840.00	PMD
	Analysis of caselaw re: extent of incidental and consequential damages when buyer revokes acceptance under UCC (1.4).	1.40	147.00	JJB
	Draft and revise Jury Instructions notebook, for use at trial (1.1); revise Plaintiff's Trial Exhibits notebook (0.3); prepare Dennis Burke trial notebook (3.2).	4.60	322.00	TAV
May-11-07	Trial preparation re: continue review of deposition testimony of trial witnesses (7.2), receipt and review Plaintiff's revised exhibit list (0.3).	7.50	937.50	MEK
	Analysis of transcript of deposition of Ernest DeGroot and preparation of cross-examination questions for use at trial (4.5); analysis and preparation of citations to deposition transcript for reference on cross examination of Ernest DeGroot at trial (1.5).	6.00	630.00	RCP
	Continue review and comparison of jury instructions proposed by all parties (2.4); analysis of case law relied upon by Plaintiffs in support of proposed jury instructions (2.0); prepare outline of objections to proposed jury instructions (4.5).	8.90	934.50	PMD
	Analysis of case law re: whether Standley is an 'agent' of Houle in furtherance of drafting/revising special verdict form; continue analysis of of law re: limitations for incidental and consequential damages in furtherance of drafting-revising special verdict form, and revising proposed jury instructions; review law re: notification of breach in furtherance of revising-drafting special verdict form; outline proposed revisions to special verdict form (4.2).	4.20	441.00	JJB
	Prepare Kurt Standley trial notebook (5.2).	5.20	364.00	TAV

May-12-07	Trial preparation re: review and revise Memorandum in Support of Objections to Plaintiffs' Proposed Jury Instructions (1.2); telephone conference with Plaintiffs' counsel re: stipulations/objections to trial exhibits (0.9); revise opening statement (1.8); pull exhibits to utilize with examination of witnesses (1.5); continue review witnesses' deposition testimony and outline of questioning (4.8).	10.20	1,275.00	MEK
	Continue analysis and preparation of objections to Plaintiffs' proposed jury instructions (3.5).	3.50	367.50	PMD
May-13-07	Trial preparation re: receipt and review email correspondence from Company re: trial contacts/summary of settlement demands (0.1); revise and final voir dire questions (2.8); prepare and revise opening statement (2.6); revise cross-examination of Charles DeGroot and Ernest DeGroot (2.5); review stipulated exhibits for use on cross examination (2.2); telephone conference with court and counsel re: potential vacation of trial and certification of issues on appeal (0.3).	10.50	1,312.50	MEK
May-14-07	Telephone conference with court and counsel of record re: certification of appeal issues (0.2); telephone call with Houle counsel re: vacation of trial and issues on appeal (0.1); telephone call with Company re: trial status (0.1); prepare stipulation of parties re: vacation of trial and certification of issues of law (0.1); letter to counsel of record re: stipulation (0.1); telephone call with Insured re: vacation of trial and appeal issues (0.1); telephone call with trial witnesses, Jeff Griggs and Jon Roth re: vacation of trial (0.1); telephone call with Insured's counsel on counterclaim re: vacation of trial (0.1).	0.90	112.50	MEK
	Telephone conference with consulting agricultural expert re: revisions to affidavit (0.2); receipt and review affidavit from Insured's consulting expert re: analysis of Plaintiffs' economic loss report (0.1).	0.30	31.50	PMD
May-15-07	Email correspondence from Plaintiffs' counsel re: Stipulation to Vacate Trial Setting (0.1); telephone call with Houle's counsel re: Stipulation (0.1); revise Stipulation and recirculate to counsel (0.2); receipt and review correspondence from Insured's counsel re: vacation of trial (0.1).	0.50	62.50	MEK

May-01-07	Copying - Correspondence and Pleadings for Trial Preparation 578 @ 0.10	57.80
May-02-07	Copying - Correspondence and Pleading 30 @ 0.10	3.00
May-03-07	EAC Engineering, Inc. Michael Mitchell, P.E. - Invoice #2177 - TIN 20-0103452	650.00
	Copying - Pleading 19 @ 0.10	1.90
May-08-07	Copying - Correspondence and Pleadings 120 @ 0.10	12.00
	Copying - Trial Documents 381 @ 0.10	38.10
	Copying - Color Printing - Trial Documents 87 @ 1.00	87.00
May-09-07	Copying - Trial Documents 34 @ 0.10	3.40
May-10-07	Ernest DeGroot - Trial Witness/Mileage Fees	32.61
	Andy Ward - Trial Witness/Mileage Fees	25.35
	Bruce Cooper - Trial Witness/Mileage Fees	29.82
	Office Depot - Trial Binder Exhibit Supplies	108.50
	Copying - Trial Documents 449 @ 0.10	44.90
	Copying - Pleading 5 @ 0.10	0.50
May-11-07	Greg Troost - Trial Witness/Mileage Fees	28.63
	Jon Roth - Trial Witness/Mileage Fees	26.36
	Copying - Correspondence and Pleading 25 @ 0.10	2.50
	Copying - Color Printing - Photographs for Trial Exhibits 170 @ 1.00	170.00
	Copying - Witness Documents 103 @ 0.10	10.30
May-14-07	Copying - Pleading 10 @ 0.10	1.00
May-15-07	Copying - Pleading 3 @ 0.10	0.30
May-16-07	Copying - Subpoenas 12 @ 0.10	1.20
	Telephone - Long Distance 79 @ 0.16	12.64
May-18-07	Office Depot - Additional Trial Exhibit Supplies	40.04
May-31-07	Tri-County Process Serving - Invoices #54799	95.00
	Tri-County Process Serving - Invoices #55231, #55201	288.05
Jun-16-07	Telephone - Long Distance 3 @ 0.16	0.48
Jun-29-07	Tri-County Process Serving - Invs. #55233, #55202, #55232, #55204, #55203	453.80

Invoice #: 4251

Page 8

July 13, 2007

Unishippers - Invoice #1003106091 - Overnight to
Jeff Griggs, Jerome, ID - 5/9/07

28.53

Totals

\$2,253.71

\$0.00

Total Fees & Disbursements Due this Billing Cycle

\$23,218.71

Previous Balance

\$44,468.44

Previous Payments

\$0.00

Balance Forward + Current Balance = Total Now Due

\$67,687.15

M. Michael Sasser [ISB No. 1666]
 SASSER & INGLIS, P.C.
 Attorneys at Law
 1902 W. Judith Lane, Suite 100
 P.O. Box 5880
 Boise, Idaho 83705
 Telephone No. (208) 344-8474
 Facsimile No. (208) 344-8479

FILED
 A.M. 12:05 P.M.

NOV 22 2011

CANYON COUNTY CLERK
 K CANO, DEPUTY

Attorneys for Defendant/Third Party Defendant,
 Standley Trenching, Inc., dba 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,)

vs.)

STANDLEY TRENCHING, INC., dba,)
 STANDLEY & CO.; J HOULE & FILS, Inc.,)
 a Canadian corporation;)

Defendants.)

and)

STANDLEY TRENCHING, INC., dba)
 STANDLEY & CO.,)

Counterclaimant,)

Case No. CV 01-7777
 Case No. CV 05-2277

**AFFIDAVIT OF M. MICHAEL SASSER
 IN SUPPORT OF STANDLEY
 TRENCHING, INC.'S MEMORANDUM
 OF COSTS AND ATTORNEY FEES**

**AFFIDAVIT OF M. MICHAEL SASSER IN SUPPORT OF STANDLEY TRENCHING, INC.'S
 MOTION FOR COSTS AND ATTORNEY FEES - 1.**

CHARLES DeGROOT AND DeGROOT)
 FARMS, LLC,)
)
 Plaintiffs,)
)
 vs.)
)
 BELTMAN CONSTRUCTION, INC., dba,)
 BELTMAN WELDING AND)
 CONSTRUCTION, a Washington corporation,)
)
 Defendant/Third-Party)
 Plaintiff)
)
 vs.)
)
 STANDLEY TRENCHING, INC., dba,)
 STANDLEY & CO., an Idaho corporation;)
 J. HOULE & FILS, INC., a Canadian)
 corporation,)
)
 Third-Party Defendants.)
 _____)

STATE OF IDAHO)
) ss.
 County of Ada,)

M. MICHAEL SASSER, being first duly sworn on oath, deposes and says as follows:

1. That your Affiant is an attorney duly licensed to practice law within the state of Idaho. In that capacity, your Affiant is the senior partner in the law firm of Sasser & Inglis, P.C., attorneys for Defendant/Third Party Defendant Standley Trenching, Inc., d/b/a Standley & Co., (hereinafter "Defendant"), in the above-entitled action. The information contained herein is based upon your Affiant's personal knowledge.

2. That this Affidavit is submitted in support of Defendant's Motion for Costs and Attorneys Fees.

AFFIDAVIT OF M. MICHAEL SASSER IN SUPPORT OF STANDLEY TRENCHING, INC.'S MOTION FOR COSTS AND ATTORNEY FEES - 2.

3. That the Defendant is the prevailing party under Rules 54(d)(1)(B) and 54(e)(1) of the Idaho Rules of Civil Procedure in the above-captioned litigation as a result of this Court having granted Defendant's Motion for Summary Judgment which disposed of Plaintiffs' claims.

4. That to the best of Affiant's knowledge and belief, the items of costs set forth in the Memorandum of Costs and Attorney Fees are correct and were necessarily incurred by Defendant in defense of the above-entitled action.

5. That the total costs are set forth in the Memorandum of Costs filed herewith and the items of costs are set forth as costs as a matter of right and/or discretionary costs under rule 54(d)(1)(C) and (D).

6. That said costs were exceptional, necessary, and reasonably incurred which, in the interest of justice, should be assessed against Plaintiffs. These costs were incurred in the defense of this matter. These costs were not incurred for the purpose of harassment or in bad faith or for the purpose of increasing the cost to any party.

7. That the costs set forth in the Memorandum of Costs and Attorney Fees are in compliance with Rules 54(d)(5), 54(d)(1)(C) and 54(d)(1)(D) of the Idaho Rules of Civil Procedure. The total costs incurred in defense of this case were \$1,460.90.

8. That to the best of Affiant's knowledge and belief, the total amount of attorney fees set forth in the Memorandum of Costs and Attorney Fees is correct and was necessarily incurred by Defendant in the above-entitled action and is in compliance with Rules 54(e)(5) and 54(e)(3).

**AFFIDAVIT OF M. MICHAEL SASSER IN SUPPORT OF STANDLEY TRENCHING, INC.'S
MOTION FOR COSTS AND ATTORNEY FEES - 3.**

9. The attorneys who have worked on this case and their billing rates are:

<u>Attorneys/Paralegal</u>	<u>Billing Rate (per hour)</u>
M. Michael Sasser	\$ 125.00
James F. Jacobsen	\$ 100.00
Clay Shockley	\$ 100.00

The attorney fees charged were based on the flat rate of \$125.00 per hour when billed by Mr. Sasser or \$100.00 per hour when billed by Mr. Jacobsen and Mr. Shockley. The attorney fees were not based on a contingency fee basis. The fees were calculated by multiplying the hourly rate by the time expended for services rendered. The firm bills on increments of 1/10 of an hour. The attorney fees in defense of this case total \$43,412.50. M. Michael Sasser has billed a total of 238.4 hours from August 7, 2007 through October 28, 2011, for attorney fees in the amount of \$29,800.00; James F. Jacobsen has billed a total of 61.5 hours from August 7, 2007 through October 28, 2011, for attorney fees in the amount of \$6,150.00; and Clay Shockley has billed a total of 72.6 hours from August 7, 2007 through October 28, 2011, for attorney fees in the amount of \$7,260.00. The total amount of attorney fees incurred to date equals \$43,412.50.

10. A summary billing statement reflecting the fees and costs incurred in the defense of this matter is attached hereto as Exhibit "A" and by this reference, incorporated herein.

11. The attorneys who have worked in the case have had many years of experience in litigation. M. Michael Sasser has practiced law for 34 years, and practices in the areas of litigation, insurance defense, environmental law, products liability, and employment law. James F. Jacobsen has practiced law for 7 years, and practices in the areas of insurance defense, construction litigation, general business, and estate planning. Clay Shockley has practiced law for 18 years, and

practices in the areas of insurance defense, construction litigation, general business, family and estate planning.

12. The billing rates for the attorneys working on the case set forth in paragraph nine are comparable to the rates charged for similar work in Boise, Idaho.

13. All of the Plaintiffs' claims and causes of action were dismissed pursuant to the Court's granting Defendant's Motion for Summary Judgment.

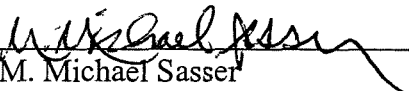
14. The results obtained were reasonable in light of the Plaintiffs' claims, which arose out of the commercial transaction entered into by the Plaintiffs and Defendants regarding Defendant Standley Trenching, Inc.'s provisions of professional services.

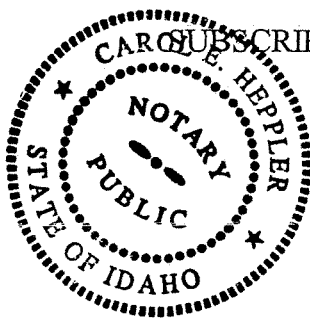
15. The defense of this case was not undesirable.

16. Attorney fee awards in similar cases have been made based on a prevailing party in a commercial transaction.

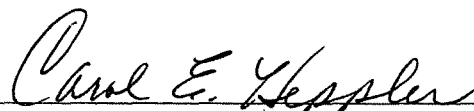
17. Further, Affiant sayeth naught.

DATED this 22nd day of November, 2011.


M. Michael Sasser



SUBSCRIBED AND SWORN to before me this 22nd day of November, 2011.


Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 7/10/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 475-0101

Attorney for Plaintiffs/Counterdefendants
Charles DeGroot and DeGroot Farms, LLC

William A. McCurdy
702 W. Idaho, Ste. 1100
Boise, Idaho 83702

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission - 947-5910

Attorneys for Defendants/Third-Party
Defendant J. Houle & Fils, Inc.

~~Robert D. Lewis
Cantrill Skinner Sullivan & King, LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701~~

~~Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 345-7212~~

Attorneys for Counterclaimant Standley
Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet
District Judge
1115 Albany Street
Caldwell, Idaho 83605

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 455-6048

Alexa Medema
Law Clerk to Hon. Gregory Culet

Hand Delivery
 Email – amedema@3rdjd.net



M. Michael Sasser

EXHIBIT "A"

SASSER & INGLIS, P.C.

Attorneys at Law

1902 W. JUDITH LANE, SUITE 100
P.O. BOX 5880
BOISE, ID 83705.

Telephone No. (208) 344-8474

Employer I.D. #82-0392840

Continental Western Group
11201 Douglas Drive
Urbandale, IA 50322
Attn: Joseph G. Burkle

Billing Date: 10/31/2011

Account No.: 6834
MMS

Re: Beltman Construction, Inc. v. Standley Trenching, Inc.
Claim No. 02000160

PROFESSIONAL SERVICES RENDERED

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
08/07/07	- MMS	T/conf with R. Connor re basic case facts and assignment (.2); review letter from Atty M. Kelley to R. Connor re facts and status (.2).	0.40 125.00/hr	50.00
08/08/07	- MMS	Review portions of case pleadings re case facts and issues (.5); review letters re case facts (.2).	0.70 125.00/hr	87.50
08/09/07	- MMS	Review plf's complaint and answer of Standley Trenching (.7); prepare outline of claims of parties (.5).	1.20 125.00/hr	150.00
08/14/07	- MMS	Review portions of case pleadings re claims of parties (.7).	0.70 125.00/hr	87.50
09/26/07	- MMS	T/conf with Atty M. Kelly re file documents and transfer of case (.2); t/conf with B. Connord re case documents and transfer of case (.1); emails to B. Connors re case documents and transfer of case (.2).	0.50 125.00/hr	62.50
10/10/07	- MMS	Review and respond to emails from J. Mallary re file of Atty M. Kelly (.3); t/conf with J. Mallary re file of Atty M. Kelly (.1); review letters from J. Mallary and Atty M. Kelly re case files (.2); t/conf with Atty R. Lewis re copies of case documents (.2).	0.80 125.00/hr	100.00
10/12/07	- MMS	T/conf with Atty W. McCurdy re case issues and facts (.3).	0.30 125.00/hr	37.50

**Finance Charges of 1.5% Will Be Charged on All 30-Day Past Due Accounts
Please Refer to the Account Number When Making Payments**

Thank You For Your Prompt Payment

1029

SASSER & INGLIS, P.C.

Continental Western Group
 11201 Douglas Drive
 Urbandale, IA 50322
 Attn: Joseph G. Burkle

Page 2
 Billing Date: 10/31/2011
 Account No.: 6834
 MMS

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
10/15/07	- MMS	Conference with Atty B. McCurdy re case issues and facts (1.8); t/conf with clerk of court re case status issues (.2).	2.00 125.00/hr	250.00
10/16/07	- MMS	T/confs with Attys M. Kelly and R. Lewis re substitution of counsel issues (.4); prepare checklist of documents received from Atty B. McCurdy (.3); email to Atty M. Kelly re substitution of counsel (.1); prepare notice of substitution of counsel (.2); review portions of case pleadings (2.0).	3.00 125.00/hr	375.00
10/17/07	- MMS	Review portions of case pleadings and documents (1.2); t/conf with Atty B. McCurdy re court's order re MSJ (.3).	1.50 125.00/hr	187.50
10/18/07	- MMS	Review portions of case pleadings (2.0); review letter from Atty M. Kelly to J. Mallary re transfer of case file (.1); t/conf with Atty B. McCurdy re case motions (.4).	2.50 125.00/hr	312.50
10/19/07	- MMS	Review portions of case pleadings (1.3); email to J. Mallary re transfer of case files (.1); prepare email to Atty M. Kelly re transfer of case files (.1).	1.50 125.00/hr	187.50
10/22/07	- MMS	Review portions of case pleadings and documents (2.3).	2.30 125.00/hr	287.50
10/23/07	- MMS	T/conf with Atty B. McCurdy re case pleadings and case history (.3); review portions of case pleadings (1.2).	1.50 125.00/hr	187.50
10/24/07	- MMS	Review and sign notice of substitution (.1); email to R. Connor re status of obtaining case documents (.1); review portions of case pleadings (1.6).	1.80 125.00/hr	225.00
10/25/07	- MMS	Review Idaho Supreme Court order dismissing appeal (.1); t/conf with Atty B. McCurdy re file documents (.1).	0.20 125.00/hr	25.00

Finance Charges of 1.5% Will Be Charged on All 30-Day Past Due Accounts
Please Refer to the Account Number When Making Payments
 Thank You For ~~1030~~ Prompt Payment

SASSER & INGLIS, P.C.

Continental Western Group
 11201 Douglas Drive
 Urbandale, IA 50322
 Attn: Joseph G. Burkle

Page 3
 Billing Date: 10/31/2011
 Account No.: 6834
 MMS

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
10/31/07	- MMS	Review portions of case pleadings and documents (1.3).	1.30 125.00/hr	162.50
11/01/07	- MMS	Review portions of project documents of Standley Trenching (1.0); t/conf with Atty B. McCurdy re case issues and events (.3).	1.30 125.00/hr	162.50
11/05/07	- MMS	Review portions of case pleadings (2.8).	2.80 125.00/hr	350.00
11/07/07	- MMS	Review portions of pleadings and case documents (1.3); t/conf with Atty B. McCurdy re depositions taken in case (.2).	1.50 125.00/hr	187.50
11/15/07	- MMS	Review letter and portions of claim file documents received from R. Connor (.8); review portions of claim file documents (2.0).	2.80 125.00/hr	350.00
11/20/07	- MMS	Review portions of case pleadings and documents (2.5).	2.50 125.00/hr	312.50
12/13/07	- MMS	T/conf with R. Connor re status of case and collection of file documents (.2); prepare letter to R. Connor re case status and issues (.3); review portions of case depositions (1.2).	1.70 125.00/hr	212.50
12/18/07	- MMS	Review court orders of district judge re case issues and schedules (.5).	0.50 125.00/hr	62.50
12/28/07	- MMS	Letter to R. Conner re case status and development (.3); letter to K. Standley re case status and conference (.2); review portions of Standley's project documents (1.7).	2.20 125.00/hr	275.00
01/10/08	- MMS	Prepare for and attend conference with insured K. Standley to discuss facts of case and the construction project (5.5).	5.50 125.00/hr	687.50
02/13/08	- MMS	Conference with R. Connor re claims of DeGroot and defense strategy (.2); review portions of documents of Standley Trenching	3.70 125.00/hr	462.50

Finance Charges of 1.5% Will Be Charged on All 30-Day Past Due Accounts
Please Refer to the Account Number When Making Payments
Thank You For Your Prompt Payment

SASSER & INGLIS, P.C.

Continental Western Group
 11201 Douglas Drive
 Urbandale, IA 50322
 Attn: Joseph G. Burkle

Page 4
 Billing Date: 10/31/2011
 Account No.: 6834
 MMS

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
		(1.8); analysis re defense strategy and possible pre-trial motions (1.7).		
02/14/08	- MMS	Review portions of deposition transcripts and referenced exhibits (3.3); analysis re case motions for summary judgment issues, memos of law, and rulings by judge (3.2); prepare action plan report to R. Connor (1.3); t/conf with Atty W. McCurdy re case issues (.2).	8.00 125.00/hr	1,000.00
02/15/08	- MMS	Preparation of action plan report (.6); review and analysis re portions of documents of Standley Trenching re construction project (1.6).	2.20 125.00/hr	275.00
02/19/08	- MMS	Review email from R. Connor re case issues and strategy (.1); analysis re pre-judgment issue and Beltman's claim for pre-judgment interest (1.1).	1.20 125.00/hr	150.00
02/20/08	- JFJ	Analysis re recovery of prejudgment interest (1.2); prepare memo re recovery of prejudgment interest (1.2).	2.40 125.00/hr	300.00
	- MMS	T/conf with R. Connor re case issues of prejudgment interest and attorney fees (.2); review portions of Standley Trenching project documents (1.3).	1.50 125.00/hr	187.50
02/21/08	- MMS	Analysis re DeGroot's and Beltman's corporate negligence (.8); analysis re DeGroot's right to recover damages greater than those claimed by Beltman (1.0).	1.80 125.00/hr	225.00
02/25/08	- MMS	Analysis re DeGroot's compensatory damage claims (1.0).	1.00 125.00/hr	125.00
02/29/08	- MMS	T/conf with R. Connor re case defense strategy issues (.3); analysis re Beltman's contract damage claim (.5).	0.80 125.00/hr	100.00

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
03/05/08	- MMS	T/conf with R. Connor re action plan report (.1); prepare second amended action plan report (.2); review court order re case schedule and rulings (.2).	0.50 125.00/hr	62.50
03/13/08	- MMS	Prepare email to R. Connor re dismissal of case for lack of prosecution and related issues (.2); t/conf with Atty R. Lewis re insured counterclaim judgment against Beltman and defense strategy (.3).	0.50 125.00/hr	62.50
05/19/08	- MMS	Analysis re deposition testimony of K. Standley (.8); t/conf with clerk of court re potential dismissal of Beltman Construction claims (.2).	1.00 125.00/hr	125.00
06/06/08	- MMS	Review portions of insured's documents re project design and installation of system (1.0).	1.00 125.00/hr	125.00
08/08/08	- MMS	T/conf with B. Connor re case status (.2); prepare checklist of depositions and discovery items to be completed (.3).	0.50 125.00/hr	62.50
08/09/08	- MMS	Review portions of case documents, pleadings and court orders to prepare for t/conf with CWG representatives (2.0); prepare outline for conference with CWG representatives re case issues and defense strategy (.5).	2.50 125.00/hr	312.50
	- MMS	T/conf with CWG representatives re case status and defense strategy (.8); prepare letters to B. Connor re defense strategy (.4); review court filing log for key court orders (.6).	1.80 125.00/hr	225.00
08/12/08	- MMS	T/conf with Atty of J. Fisher re case status and conference with presiding judge (.1); email to Atty J. Fisher and B. Connor re case conference (.2); prepare memo re defense strategy (1.0).	1.30 125.00/hr	162.50

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
08/25/08	- MMS	T/conf with Atty J. Fisher re potential appeal of case to Idaho Supreme Court (.3); analysis re current claims of Beltman against Standley (1.7).	2.00 125.00/hr	250.00
08/26/08	- MMS	Review portions of discovery pleadings of DeGroot Farms (1.0); t/conf with Atty J. Fisher re claims of DeGroot Farms and Beltman (.3); t/conf with Atty R. Lewis re Standley's judgment and claims (.2).	1.50 125.00/hr	187.50
08/27/08	- MMS	Review portions of case pleadings and orders to prepare for case conference with Judge Culet and all counsel (.7); prepare summary of case issues for discussion at case conference (.5); t/conf with B. McCurdy re case issues (.2).	1.40 125.00/hr	175.00
08/28/08	- MMS	Attend and participate in conference with Judge Culet and all counsel re case review, pending issues and potential appeal (1.2); conference with Atty B. McCurdy and Atty R. Lewis re defense strategy issues (.8); prepare memo to file re case conference (.2).	2.20 125.00/hr	275.00
08/29/08	- MMS	T/conf with B. Connor re events at case conference with Judge and Culet and counsel (.2); analysis re case pleadings re issues to appeal to Idaho supreme court (.8); t/conf with Atty J. Fisher re appeal to Idaho supreme court (.3).	1.30 125.00/hr	162.50
09/03/08	- MMS	T/conf with Atty M. Kelly re case issues (.2); t/conf with B. Connor re case issues (.1); analysis re appeal issues to Idaho Supreme Court (.9).	1.20 125.00/hr	150.00
09/04/08	- MMS	Prepare email to all counsel re appeal to Idaho Supreme Court (.2); t/conf with Atty B. McCurdy re appeal issues (.2); t/conf with Atty M. Kelly re case and documents (.3).	0.70 125.00/hr	87.50

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
10/13/08	- MMS	Review portions of documents of Standley Trenching (.8); t/conf with Atty B. McCurdy re appeal issues (.2).	1.00 125.00/hr	125.00
10/14/08	- MMS	Review portions of Standley Trenching project documents (.5).	0.50 125.00/hr	62.50
10/15/08	- MMS	T/conf with Atty R. Lewis re stipulation for appeal (.1); t/conf with Atty J. Fischer re stipulation for appeal (.1); review letter re stipulation for appeal (.1).	0.30 125.00/hr	37.50
11/19/08	- MMS	Review and respond to emails from R. Musselman and Atty R. Lewis re case status and issues (.2).	0.20 125.00/hr	25.00
11/20/08	- MMS	T/conf with Atty J. Fischer re case documents and status conference (.2); review notice of status conference (.1).	0.30 125.00/hr	37.50
11/21/08	- MMS	Review DeGroot's damage claim calculation (.3).	0.30 125.00/hr	37.50
12/08/08	- MMS	Analysis re proper appeal issues and procedures (1.0); t/conf with Atty P. McCluskey re appeal stipulation (.2).	1.20 125.00/hr	150.00
12/12/08	- MMS	Review and respond to emails from Atty J. Fischer and Atty R. Lewis re appeal issues (.3); analysis re appeal issues and portions of court orders re motions for summary judgment (1.2).	1.50 125.00/hr	187.50
12/17/08	- MMS	Review and respond to emails from Atty R. Lewis and Atty J. Fischer re stipulation for appeal of case issues to Idaho Supreme Court (.3); prepare proposed changes to stipulation for appeal of case (1.0).	1.30 125.00/hr	162.50
12/18/08	- MMS	Review and respond to emails from Atty J. Fischer, Atty B. McCurdy and Atty R. Lewis re stipulation for appeal (.5).	0.50 125.00/hr	62.50

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01/13/09	- MMS	Analysis re appeal issues related to Standley Trenching's MSJ (.6); review portions of case pleadings re MSJ of Houle (1.0); t/conf with Atty B. McCurdy re appeal issues (.2).	1.80 125.00/hr	225.00
01/14/09	- MMS	Analysis re facts of case related to Standley's defenses of claims by Beltman (1.1).	1.10 125.00/hr	137.50
01/15/09	- MMS	Analyze appellate arguments of Beltman re warranty claims (.8); t/conf with Atty J. Fischer re appeal of case issues (.2).	1.00 125.00/hr	125.00
01/16/09	- MMS	Review portions of MSJ memorandum and documents re Standley Trenching's motions (1.0); t/conf with J. Fischer re appeal issues (.3).	1.30 125.00/hr	162.50
01/20/09	- MMS	Prepare and review of proposed order for appeal of case (.5); t/conf with Atty R. Lewis re order for appeal of case (.3).	0.80 125.00/hr	100.00
01/22/09	- MMS	Review and preparation of draft order for appeal of case (.5); t/conf with Atty R. Lewis re order for appeal of case (.2); email to Atty R. Lewis re order for appeal of case (.1); t/conf with Atty J. Fischer re order for appeal of case (.2).	1.00 125.00/hr	125.00
01/23/09	- MMS	T/conf with Atty B. McCurdy re draft order for appeal of case (.2).	0.20 125.00/hr	25.00
01/26/09	- MMS	T/conf with Atty R. Lewis and Atty B. McCurdy re draft of order of court for appeal of case (.5); analysis re remaining case issues against Standley Trenching (.8).	1.30 125.00/hr	162.50
01/29/09	- MMS	Review portions of motions for summary judgment orders and related documents for analysis of claims to be appealed (.9); prepare chart of parties and claims (.6).	1.50 125.00/hr	187.50

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
01/30/09	- MMS	Review portions of pleading files by Beltman Construction (.8); review emails from R. Musselman (.2).	1.00 125.00/hr	125.00
02/02/09	- MMS	T/conf with R. Musselman re preparation for roundtable and case issues (.2); t/conf with S. Kenyon at Idaho Supreme Court re appeal timeline (.2); review court order re appeal (.1).	0.50 125.00/hr	62.50
02/05/09	- MMS	Prepare for and participate in t/conf with CWG representatives re case status and defense plan (1.0); t/conf with Atty J. Fischer re order for appeal of case (.3); prepare memo to file re status conference decisions (.2).	1.50 125.00/hr	187.50
02/17/09	- MMS	T/conf with Atty R. Lewis and Atty J. Fischer re appeal to Idaho Supreme Court (.3).	0.30 125.00/hr	37.50
03/09/09	- MMS	Prepare letter to R. Musselman re case status (.2); t/conf with Atty R. Lewis filing of appeal documents (.2); t/conf with Idaho Supreme Court re filing of appeal documents (.1).	0.50 125.00/hr	62.50
	- MMS	Analysis re appellate issues of contract claims relating to Standley Trenching (1.0).	1.00 125.00/hr	125.00
03/11/09	- MMS	T/conf with Atty J. Fischer re appeal of case to Idaho Supreme Court (.2); analysis re appellate issues re claim against Standley Trenching (.8).	1.00 125.00/hr	125.00
04/21/09	- MMS	T/conf with Atty B. McCurdy re status of DeGroot Farm's appeal of case (.2); analysis re appellate issues (.6).	0.80 125.00/hr	100.00
05/22/09	- MMS	Review letter from B. McCurdy re appeal of case status (.1); prepare email to al attys re appeal of case status (.1); review portions of case pleadings re appellate issues (1.1).	1.30 125.00/hr	162.50
06/23/09	- JFJ	T/conf with Atty R. Lewis re motion for permission to appeal (.2).	0.20 100.00/hr	20.00

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06/24/09	- JFJ	T/conf with Atty R. Lewis re teleconference on appeal issues (.1).	0.10 100.00/hr	10.00
06/25/09	- MMS	T/conf with Atty R. Lewis re case status (.2); review letter from C. Mackey re representation of DeGroot Farms (.1); analysis re response to Idaho Supreme Court re appellate status (.2).	0.50 125.00/hr	62.50
06/29/09	- MMS	T/conf with Atty B. McCurdy and Atty R. Lewis re strategy issues for appellate proceeding (.2); t/conf with Atty K. Dinius' office re appeal of case (.1); prepare checklist of appellate issues (.9).	1.20 125.00/hr	150.00
07/17/09	- MMS	T/conf with R. Musselman re case developments (.2); t/conf with Atty R. Lewis and Atty K. Dinius re appeal of case and motion for Idaho Supreme Court to hear appeal (.3).	0.50 125.00/hr	62.50
07/21/09	- MMS	T/conf with Atty K. Dinius re appeal of case (.2); prepare email to Atty K. Dinius and Atty W. McCurdy re appeal of case (.2); review portions of court orders re district court case (.3).	0.70 125.00/hr	87.50
08/13/09	- MMS	T/conf with Atty K. Dinius re appeal of case (.2).	0.20 125.00/hr	25.00
08/17/09	- MMS	T/conf with B. McCurdy re status conference with court and case strategy (.3).	0.30 125.00/hr	37.50
08/25/09	- MMS	Prepare for and participate in status conference with Judge Culet and other counsel re appeal of case (.8); preparation of stipulation re appeal of case (.5); t/conf with Atty B. McCurdy re appeal of case (.2).	1.50 125.00/hr	187.50
09/02/09	- MMS	Review stipulation and order for rule to appeal of case (.2); t/conf with Atty K. Dinius re order for appeal (.1).	0.30 125.00/hr	37.50

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09/03/09	- MMS	T/confs with Atty B. McCurdy and Atty R. Lewis re strategy for appeal of case (.3); prepare memo to file re appeal of case (.2).	0.50 125.00/hr	62.50
09/04/09	- MMS	T/conf with Atty K. Dinius re appeal of case and appellate issues (.3).	0.30 125.00/hr	37.50
09/15/09	- MMS	Review portions of district court motions for summary judgment claims and arguments (1.2); t/conf with Atty R. Lewis re appellate issues (.3).	1.50 125.00/hr	187.50
09/29/09	- MMS	Review motion for permissive appeal and supporting affidavit and documents to file with Idaho Supreme Court (.5); t/conf with Atty K. Dinius re appeal documents (.2).	0.70 125.00/hr	87.50
10/02/09	- MMS	Analysis re appellate issues related to Standley Trenching (.5).	0.50 125.00/hr	62.50
11/06/09	- MMS	Review DeGroot's memo in support of permission to appeal (.3); t/conf with Atty R. Lewis re appeal strategy and issues (.4).	0.70 125.00/hr	87.50
11/19/09	- MMS	Review order of Idaho Supreme Court denying appeal of case (.1); review and respond to email of R. Musselman re appeal (.1); review portions of trial court documents and orders (.5).	0.70 125.00/hr	87.50
02/01/10	- MMS	Review and analysis of DeGroot's motion to reconsider MSJ rulings (.9); analysis re portions of case law cited by DeGroot in motion to reconsider MSJ rulings (.6).	1.50 125.00/hr	187.50
02/09/10	- MMS	T/conf with Atty R. Lewis re case strategy and status conference to address case status with judge (.3); t/conf with Atty B. McCurdy re status conference with judge (.2).	0.50 125.00/hr	62.50
02/11/10	- JFJ	Analysis of plf's memo in support of motion to reconsider (.7).	0.70 100.00/hr	70.00

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02/11/10	- MMS	Review and respond to emails from K. Dinius re DeGroot's motion to reconsider MSJs (.3); analysis re DeGroot's memorandum of law re motion to reconsider MSJs (1.0).	1.30 125.00/hr	162.50
02/12/10	- MMS	Prepare email to R. Musselman re DeGroot's motion to reconsider MSJ rulings (.2); t/conf with Atty B. McCurdy re DeGroot's Motion to reconsider MSJ rulings (.3).	0.50 125.00/hr	62.50
02/15/10	- MMS	Review portions of case pleadings and documents (.5); T/conf with Atty R. Lewis re Degroot's Motion for Reconsider MSJ Order (.3).	0.80 125.00/hr	100.00
02/16/10	- JFJ	Analysis of plf's memo in support of motion to reconsider (.8).	0.80 100.00/hr	80.00
02/25/10	- JFJ	Analysis of legal and factual issues re plf's motion to reconsider (3.0).	3.00 100.00/hr	300.00
03/02/10	- MMS	Analysis re response to DeGroot's motion for reconsideration (.5).	0.50 125.00/hr	62.50
03/03/10	- MMS	T/conf with Atty B. McCurdy re J. Hule's response to DeGroot's motion for reconsideration (.3); review portions of case pleadings and documents re proper strategy for response to DeGroot's motion for reconsideration (.7).	1.00 125.00/hr	125.00
03/08/10	- JFJ	Analysis of summary judgment briefings in preparation of response on motion to reconsider (2.4)	2.40 100.00/hr	240.00
03/09/10	- JFJ	Analysis of summary judgment briefings in preparation of response to motion to consider (1.9)	1.90 100.00/hr	190.00
03/15/10	- JFJ	Analysis of legal and factual issues re motion to reconsider (1.6); analysis of legal and factual issues re third party beneficiary (1.6).	3.20 100.00/hr	320.00

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03/16/10	- JFJ	Prepare memorandum in opposition to motion to reconsider (1.6).	1.60 100.00/hr	160.00
03/18/10	- JFJ	Analysis of hearing transcript on court's ruling of Houle's MSJ (1.3); analysis of legal issues and strategic issues re agency and third party beneficiary (1.0).	2.30 100.00/hr	230.00
03/19/10	- JFJ	Analysis of case law re third party beneficiary (1.0); prepare memorandum in response to motion to reconsider (2.3).	3.30 100.00/hr	330.00
03/22/10	- JFJ	Analysis of case law re third party beneficiary (.9); analysis of case law and legal issues re privity requirement for recovery on warranty theories (.8); prepare memorandum in opposition to motion to reconsider (3.4); revise and edit memorandum in opposition to motion to reconsider (.6).	5.70 125.00/hr	712.50
03/24/10	- MMS	Review portions of court pleadings and project documents relating to DeGroot's motion for reconsideration (1.3).	1.30 125.00/hr	162.50
03/30/10	- MMS	T/conf with Atty R. Lewis regarding DeGroot's motion for reconsideration (.2); t/conf with Atty B. McCurdy regarding DeGroot's motion for reconsideration (.2); review Houle's joinder in Standley's memorandum in opposition to DeGroot's motion for reconsideration (.1).	0.50 125.00/hr	62.50
03/31/10	- JFJ	Analysis of case law and legal issues in preparation for oral argument on DeGroot's motion to reconsider (1.2); prepare outline for oral argument on DeGroot's motion to reconsider (1.0).	2.20 100.00/hr	220.00
04/01/10	- JFJ	Analysis of case law and legal issues in preparation for oral argument on DeGroot's motion to reconsider (.6); travel to and from oral argument on DeGroot's motion to reconsider (1.0); attend oral argument and	2.80 100.00/hr	280.00

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		argue in opposition to DeGroot's motion to reconsider (1.2).		
04/06/10	- MMS	T/conf with Atty K. Dinius re status conference with court and DeGroot's plan to seek a permissive appeal to the Idaho Supreme Court (.3); t/conf with R. Musselman re nature of remaining claims against Standley Trenching and permissive appeal to the Idaho Supreme Court (.3); prepare email to R. Musselman re case status and remaining claims against Standley Trenching (.2); t/conf with Atty R. Lewis re permissive appeal issues (.2).	1.00 125.00/hr	125.00
04/07/10	- MMS	Prepare for status conference with counsel and court re Rule 12 appeal (.3); participate in status conference with counsel and court re Rule 12 appeal (.4); t/conf with Atty R. Lewis re appeal procedures (.2); prepare email to R. Musselman re case status and developments (.1).	1.00 125.00/hr	125.00
04/13/10	- JFJ	Analysis of legal issues and standards re permissive appeal (.2).	0.20 100.00/hr	20.00
	- MMS	Review order denying DeGroot's motion to reconsider summary judgment ruling (.1); review proposed stipulation for Rule 12 appeal to the Idaho Supreme Court and court's motion for summary judgment orders (.3); prepare email to counsel and all parties re content to Rule 12 stipulation (.3); t/conf with Atty B. McCurdy re Rule 12 appeal issues (.3).	1.00 125.00/hr	125.00
04/14/10	- MMS	T/conf with Atty B. McCurdy and Atty R. Lewis re Rule 12 appeal issues and procedures (.3); prepare email to Atty K. Dinius re form of Rule 12 stipulation (.2).	0.50 125.00/hr	62.50

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05/04/10	- MMS	T/conf with Atty K. Dinius re status of Rule 12 Appeal (.2).	0.20 125.00/hr	25.00
05/10/10	- MMS	Review DeGroot's motion for permission to appeal to the Idaho Supreme Court and all supporting documents (.5).	0.50 125.00/hr	62.50
06/15/10	- MMS	Review order of the Idaho Supreme Court re Rule 12 Appeal (.1); prepare email to R. Mussulman re Idaho Supreme Court order (.1); t/confs with Attys B. McCurdy and R. Lewis re issues related to continuation of case (.3).	0.50 125.00/hr	62.50
06/22/10	- MMS	Review portions of extensive case pleadings and documents to analyze district court case status and manner in which case will proceed (1.8); t/conf with Atty K. Dinius re intentions of DeGroot Farms/Beltman re case (.2).	2.00 125.00/hr	250.00
07/01/10	- MMS	T/conf with Atty R. Lewis re status of case and defense strategy (.2).	0.20 125.00/hr	25.00
07/20/10	- MMS	T/conf with Atty K. Dinius re intentions of his clients re case (.2); t/conf with Atty B. McCurdy re defense strategy (.1).	0.30 125.00/hr	37.50
07/29/10	- JFJ	Analysis and calculations re judgment amount, pre and post judgment interest, and atty fees and costs (1.2).	1.20 100.00/hr	120.00
	- MMS	Review and respond to email from R. Mussulman (.3); t/conf with Atty R. Lewis re judgment on Standley Trenching and position regarding potential mediation (.2).	0.50 125.00/hr	62.50
07/30/10	- MMS	T/conf with R. Mussulman re possible resolution of case and statute of limitation issues (.2); review portions of file documents re previous mediations conducted in case (.3).	0.50 125.00/hr	62.50

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08/02/10	- MMS	T/conf with Atty R. Lewis re judgment in favor of Standley Trenching (.3); prepare email to R. Mussulman re judgment in favor of Standley Trenching and related issues (.4); t/conf with R. Mussulman re current status of case and defense strategy issues (.3); review portions of court orders re previous ruling of court re claims of DeGroot, Beltman Construction and Standley Trenching (.5).	1.50 125.00/hr	187.50
08/11/10	- MMS	Analysis re motion in limine concerning scope of DeGroot's/Beltman's claims against Standley (.8).	0.80 125.00/hr	100.00
	- MMS	Prepare for and participate in conference with company representatives re status of case, liability issues, and defense strategy (1.3); t/confs with Atty B. McCurdy and Atty R. Lewis re pre-trial motions, discovery issues and position of defs for continued defense of case (.7).	2.00 125.00/hr	250.00
08/12/10	- MMS	Review Beltman Construction's request for trial setting and analysis re response (.3); t/conf with Atty K. Dinius re possible medical and settlement issues (.2).	0.50 125.00/hr	62.50
08/18/10	- MMS	T/conf with clerk of court re status conference and related matters (.2); review plf's request for trial setting and prepare response to request for trial setting (.8).	1.00 125.00/hr	125.00
08/19/10	- MMS	T/conf with Atty R. Lewis re counterclaim and scheduling of case for trial (.3); t/conf with Atty B. McCurdy re trial witness, trial issues and scheduling (.2).	0.50 125.00/hr	62.50
08/30/10	- MMS	T/conf with Atty B. McCurdy re Houle's defense position and potential settlement negotiations with DeGroot (.4); prepare memo to file re Houle's position and potential impact on defense of case (.1).	0.50 125.00/hr	62.50

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
09/02/10	- MMS	Prepare for and participate in status conference with all counsel and court re case status, scheduling case for trial, anticipated motions and related matters (1.3); prepare email to R. Mussulmann re status conference with court (.2).	1.50 125.00/hr	187.50
09/17/10	- MMS	Review and analysis of trial setting order and disclosure deadlines (.2); t/conference with Attys R. Lewis and D. McCurdy re court's trial setting order (.3).	0.50 125.00/hr	62.50
09/24/10	- MMS	Review and analysis of DeGroot's damage claims and documents, as well as Beltman's damage claims and documents (1.2)	1.20 125.00/hr	150.00
09/30/10	- MMS	Preparation of scheduling stipulation re case events and discovery practice (.6).; t/conference with Attys R. Lewis and B. McCurdy re scheduling stipulation and mediation issues (.3). t/conference with K. Standley re case issues and status (.4).	1.30 125.00/hr	162.50
10/01/10	- MMS	T/conference with Atty R. Lewis re mediation of case and potential mediators (.2); prepare letter to K. Standley re current status of case and mediation (.3)	0.50 125.00/hr	62.50
10/04/10	- MMS	Prepare emails to Attys B. McCurdy, R. Lewis and K. Dinius re mediation and potential mediators (.3); t/conference with B. McCurdy re mediation issues and potential mediators (.2).	0.50 125.00/hr	62.50
10/20/10	- MMS	T/conf with all counsel regarding selection of mediator (.5); t/conf with legal assistant of mediator J. Magel re mediation (.2).	0.70 125.00/hr	87.50
10/26/10	- MMS	Review portions of Plf's documents regarding case issues and evidence (1.2); telephone conference with Atty R. Lewis re mediation issues (.3).	1.50 125.00/hr	187.50

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11/01/10	- MMS	Preparation of email to all counsel re mediation scheduling (.2); telephone conference with Attys R. Lewis and B. McCurdy re mediation scheduling and related issues (.3); review documents received from mediator J. Magel (.2).	0.70 125.00/hr	87.50
12/01/10	- MMS	Tel conf w/Atty B. McCurdy, Atty R. Lewis, and K. Dinius re mediation planning and scheduling (.2); prepare emails to all counsel of record and clients re mediation scheduling (.3).	0.50 125.00/hr	62.50
01/12/11	- MMS	T/conf with Atty R. Lewis re mediation issues (.2); analysis re mediation issues and strategy (.5).	0.70 125.00/hr	87.50
01/13/11	- MMS	T/conf with R. Mussulman re mediation issues and strategy (.2); t/conf with Attys R. Lewis and B. McCurdy re mediation issues (.6); preparation for mediation (1.0).	1.80 125.00/hr	225.00
01/17/11	- MMS	Analysis of legal and factual issues for preparation of mediation statement (3.0); preparation of mediation statement (3.1).	6.10 125.00/hr	762.50
01/18/11	- MMS	Analysis of legal and factual issues for preparation of mediation statement (3.0); preparation of mediation statement (2.8).	5.80 125.00/hr	725.00
01/19/11	- MMS	Analysis of legal and factual issues in preparation of mediation statement (3.10); preparation of mediation statement (1.4).	4.50 125.00/hr	562.50
01/20/11	- MMS	Review portions of file documents and pleadings to prepare for mediation (2.0).	2.00 125.00/hr	250.00
01/24/11	- MMS	Prepare outline of key talking points and arguments for mediation (2.5).	2.50 125.00/hr	312.50

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
01/24/11	- MMS	T/conf with C. Stanley re mediation issues and strategy (.3); t/conf with Atty R. Lewis and mediator J. Magel re mediation (.4); prepare for mediation proceeding (2.3).	3.00 125.00/hr	375.00
01/25/11	- MMS	Attend and participate in case mediation (3.8); t/conf with Atty R. Lewis re mediation (.2); prepare checklist of pre-trial motions to consider (.5).	4.50 125.00/hr	562.50
01/26/11	- MMS	Prepare memorandum re mediation events and issues (.5); t/conf with Atty R. Lewis re defense strategy issues (.3).	0.80 125.00/hr	100.00
01/28/11	- MMS	T/conf with Atty R. Lewis re mediation and settlement issues (.3); t/conf with Atty B. McCurdy re mediation and settlement issues (.2).	0.50 125.00/hr	62.50
02/01/11	- MMS	Telephone conference w/Atty B. McCurdy re settlement authority and issues (.1); telephone conference w/Atty R. Lewis re settlement authority and issues (.2).	0.30 125.00/hr	37.50
02/02/11	- MMS	Telephone conference with Atty R. Lewis re mediation issues, settlement issues, and request for case analysis (.2).	0.20 125.00/hr	25.00
02/09/11	- MMS	Review and analysis of revised reservation of rights letter to Standley Trenching (.3); telephone conference with Atty R. Lewis re reservation of rights letter (.2).	0.50 125.00/hr	62.50
02/23/11	- MMS	Preparation for and participate in round table conference with R. Musselman and J. Mallary (1.7); review portions of court filings relating to previous orders and decisions made by presiding judge (.8).	2.50 125.00/hr	312.50
03/22/11	- MMS	T/conf with Atty R. Lewis re remaining claims in case and potential MSJ (.3); prepare letter to Atty R. Lewis re proposed MSJ (.2).	0.50 125.00/hr	62.50

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03/25/11	- MMS	Prepare letter to Atty R. Lewis outlining case analysis and status (2.7).	2.70 125.00/hr	337.50
03/28/11	- MMS	T/conf with Atty R. Lewis re continued defense of Standley Trenching (.2).	0.20 125.00/hr	25.00
03/31/11	- MMS	T/conf with Atty R. Lewis re defense of Standley Trenching by Continental Western (.2); review portions of discovery pleadings and documents (.8).	1.00 125.00/hr	125.00
04/11/11	- MMS	T/conf with Atty R. Lewis re MSJ issues (.3); t/conf with Atty B. McCurdy re MSJ issues (.2).	0.50 125.00/hr	62.50
04/15/11	- MMS	T/conf with Atty R. Lewis re MSJ and defense of insured issues (.3).	0.30 125.00/hr	37.50
04/18/11	- MMS	T/conf with Atty B. McCurdy re discovery issues (.2); t/conf with K. Standley re case facts and evidence relating to plf's breach of contract claims (.5).	0.70 125.00/hr	87.50
04/27/11	- JFJ	Analysis of facts and deposition of S. Beltman in preparation of brief supporting partial summary judgment motion (2.8).	2.80 100.00/hr	280.00
04/29/11	- JFJ	Analysis of facts and deposition of T. Beltman in preparation of brief supporting partial summary judgment motion (.5); analysis of case law re application of UCC warranties (2.3); prepare brief in support of motion for partial summary judgment (1.9).	4.70 100.00/hr	470.00
05/02/11	- JFJ	Analysis of case law re application of UCC warranties (2.8); prepare brief in support of motion for partial summary judgment (2.2).	5.00 100.00/hr	500.00
05/09/11	- JFJ	Analysis of case law re contract rescision (.7); prepare brief in support of motion for partial summary judgment (1.0).	1.70 100.00/hr	170.00

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
05/09/11	- MMS	Analysis regarding motion in limine and supporting legal authorities (1.3).	1.30 125.00/hr	162.50
05/18/11	- JFJ	Prepare brief in support of motion for partial summary judgment (2.8).	2.80 100.00/hr	280.00
	- MMS	T/conf with all counsel and court re motion for summary judgment and discovery matters (.5).	0.50 125.00/hr	62.50
05/19/11	- JFJ	Preparation of brief in support of motion for summary judgment (2.0); prepare motion for summary judgment (.5).	2.50 100.00/hr	250.00
05/20/11	- MMS	Prepare affidavit of M. Sasser and supporting documents re motion for summary judgment (3.0); t/conf with Atty R. Lewis re motion for summary judgment (.2).	3.20 125.00/hr	400.00
05/23/11	- JFJ	Prepare brief in support of motion in limine re precluding DeGroot's damages claims (4.5).	4.50 100.00/hr	450.00
05/24/11	- JFJ	Preparation of brief in support of motion in limine (3.0); preparation of motion in limine (.5).	3.50 100.00/hr	350.00
05/26/11	- MMS	Review portions of deposition testimony of DeGroot representatives and K. Standley (1.4).	1.40 125.00/hr	175.00
06/03/11	- MMS	Review and analysis of court's order setting case for trial (.1); t/conf with insured re new trial setting (.1).	0.20 125.00/hr	25.00
06/08/11	- MMS	T/conf with Attys K. Dinius and B. McCurdy re scheduling stipulation issues (.5); t/conf with Atty K. Dinius and Atty R. Lewis re Standley's MSJ (.3).	0.80 125.00/hr	100.00

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06/10/11	- MMS	T/conf with Atty B. McCurdy re scheduling stipulation (.2); review and analysis of DeGroot/Beltman damage expert witness analysis (1.0).	1.20 125.00/hr	150.00
08/23/11	- MMS	Analysis of court's order denying Standley Trenching's prior motion for summary judgment (.5).	0.50 125.00/hr	62.50
	- MMS	Analysis of Beltmans' assignment of claims against Standley Trenching to DeGroot (.8).	0.80 125.00/hr	100.00
	- CS	Analysis of prior motions regarding express and implied warranties and breach of the implied covenant of good faith and fair dealing (1.3).	1.30 100.00/hr	130.00
08/25/11	- CS	Review portions of file documents re Standley Trenching's motion for partial summary judgment (2.5).	2.50 100.00/hr	250.00
	- MMS	Review and analysis of Beltman's opposition to Standley Trenching's motion for summary judgment and supporting affidavit of M. Hamby (2.3).	2.30 125.00/hr	287.50
08/29/11	- CS	Analysis re Standley Trenching's motion for partial summary judgment regarding express warranty and implied warranty of fitness for particular purpose (1.6).	1.60 100.00/hr	160.00
	- CS	Research re cases cited by Beltman Construction in opposition to Standley Trenching's arguments (2.7).	2.70 100.00/hr	270.00
	- CS	Draft reply memorandum re MSJ (5.3).	5.30 100.00/hr	530.00
08/30/11	- CS	Analysis of Beltman Construction's response arguments to Standley Trenching's MSJ re breach of covenant of good faith and fair dealing and rescission of contract (1.8).	1.80 100.00/hr	180.00

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08/30/11	- CS	Analysis re general contractor's incurring atty fees in defense of owner's lawsuit (1.8).	1.80 100.00/hr	180.00
	- MMS	Analysis and preparation of reply memorandum in support of motion for entry of judgment in favor of Standley Trenching (1.3).	1.30 125.00/hr	162.50
	- MMS	T/conf with Atty B. McCurdy re MSJ issues (.3).	0.30 125.00/hr	37.50
08/31/11	- CS	Analysis of Beltman Construction's response argument to MSJ re rescission of contract (1.5).	1.50 100.00/hr	150.00
	- CS	Prepare reply memo re rescission of contract and breach of covenant of good faith and fair dealing (2.5).	2.50 100.00/hr	250.00
	- CS	Prepare express warranty argument in reply memorandum re issue of reliance upon site plan for dairy (1.2).	1.20 100.00/hr	120.00
09/01/11	- CS	Review and analysis of DeGroot's and Beltman's answers to Standley's interrogatories concerning damages (1.6).	1.60 100.00/hr	160.00
	- CS	Analysis re distinguishing DeGroot's damages from Beltman's damages in Standley's motion in limine (2.0).	2.00 100.00/hr	200.00
	- CS	Analysis of Beltman's Rule 14(a) argument against Standley's motion in limine (1.4).	1.40 100.00/hr	140.00
	- MMS	Analysis re reply memorandum in support of Standley's motion in limine (1.5).	1.50 125.00/hr	187.50
09/02/11	- CS	Prepare draft of Standley's reply memorandum re DeGroot's and Beltman's damages (2.5).	2.50 100.00/hr	250.00

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
09/02/11	- CS	Prepare affidavit of Atty M. Sasser in support of Standley's reply memorandum for motion in limine (1.0).	1.00 100.00/hr	100.00
	- CS	Prepare draft of Standley's argument in reply memorandum re incidental and consequential damages (2.0).	2.00 100.00/hr	200.00
	- CS	Analysis of Beltman's case law cited in support of argument against Standley's motion in limine (1.0).	1.00 100.00/hr	100.00
	- MMS	Preparation of reply memorandum and affidavit in support of Standley Trenching's motion in limine (2.7).	2.70 125.00/hr	337.50
	- MMS	T/conf with Atty B. McCurdy re motion for summary judgment issues (.3).	0.30 125.00/hr	37.50
09/06/11	- MMS	Analysis and preparation of reply memorandum in support of LaFever Roofing's motion for entry of judgment (1.5).	1.50 125.00/hr	187.50
	- MMS	T/conf with Atty R. Lewis re motion for summary judgment issues (.2).	0.20 125.00/hr	25.00
	- MMS	Read and review all memorandums of law, affidavits and main case law re Standley's motion for summary judgment and motion in limine to prepare for oral argument and court hearing on these motions (7.0).	7.00 125.00/hr	875.00
09/07/11	- CS	Analysis and review of Beltman's amended third party complaint (1.5).	1.50 100.00/hr	150.00
	- MMS	Attend and participate in court hearing on Standley's motion for summary judgment and motion in limine (3.4).	3.40 125.00/hr	425.00
	- MMS	Conference w/Attys R. Lewis and B. McCurdy re court hearing and developments at hearing (.6).	0.60 125.00/hr	75.00

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09/07/11	- MMS	Prepare email to R. Mussulman re events relating to court hearing (.8).	0.80 125.00/hr	100.00
	- MMS	Analysis re indemnification and contribution issues relating to Beltman's claims (1.5).	1.50 125.00/hr	187.50
09/08/11	- CS	Analysis re indemnity cause of action and court's request for supplemental briefing on indemnity (3.0).	3.00 100.00/hr	300.00
	- MMS	Analysis re Beltman's claim for indemnification and Idaho legal authorities regarding this issue (2.2).	2.20 125.00/hr	275.00
	- MMS	Review portions of Beltman's legal memorandum re indemnification issue (.3).	0.30 125.00/hr	37.50
09/09/11	- CS	Prepare Standley Trenching's supplemental brief on indemnity issue (2.5).	2.50 100.00/hr	250.00
	- MMS	Analysis regarding case law and legal authorities relating to Beltman's claim for indemnification against Standley Trenching (1.3).	1.30 125.00/hr	162.50
	- MMS	T/conf with Atty B. McCurdy re indemnity issues (.2).	0.20 125.00/hr	25.00
09/12/11	- CS	Analysis of legal authority re equitable indemnity for Standley Trenching supplemental brief (3.0).	3.00 100.00/hr	300.00
09/13/11	- CS	Analysis of legal authority re distinctions between contribution, subrogation and indemnity for Standley Trenching's supplemental brief (1.6).	1.60 100.00/hr	160.00
	- CS	Prepare Standley Trenchings' supplemental brief on indemnity (2.7).	2.70 100.00/hr	270.00

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09/13/11	- CS	Analysis of legal authority re distinctions between contractual and equitable indemnity for Standley Trenching's supplemental brief (2.4).	2.40 100.00/hr	240.00
	- MMS	Prepare notice of complete motion for summary judgment on behalf of Standley Trenching (.3).	0.30 125.00/hr	37.50
	- MMS	T/conf with court reporter regarding Judge Culet's partial ruling on motion for summary judgment (.2).	0.20 125.00/hr	25.00
09/14/11	- CS	Prepare argument re indemnity for Standley Trenching's supplemental brief (4.8).	4.80 100.00/hr	480.00
09/15/11	- CS	Prepare affidavit of Atty M. Sasser re Beltman assignment of claims against Standley to DeGroot and DeGroot satisfaction of judgment to Beltman (.7).	0.70 100.00/hr	70.00
	- MMS	Analysis and preparation of supplemental memorandum re indemnification and contribution issues (1.7).	1.70 125.00/hr	212.50
	- MMS	T/conf with Atty B. McCurdy re Judge Culet's partial ruling on MSJ (.3).	0.30 125.00/hr	37.50
09/16/11	- CS	Prepare arguments re contribution for Standley Trenching's supplemental brief (3.5).	3.50 100.00/hr	350.00
	- MMS	Analysis and preparation of supplemental memorandum on behalf of Standley Trenching regarding the indemnification and contribution issues (3.7).	3.70 125.00/hr	462.50
	- MMS	T/conf with K. Standley regarding status of case and pending issues (.3).	0.30 125.00/hr	37.50
09/19/11	- MMS	Review and analysis of supplemental memorandum of DeGroot/Beltman re indemnity and contribution issues (1.0).	1.00 125.00/hr	125.00

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<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Hrs/Rate</u>	<u>AMOUNT</u>
09/22/11	- MMS	T/conf with Atty R. Lewis re MSJ issues and strategy (.3).	0.30 125.00/hr	37.50
	- MMS	Review and analysis of portions of DeGroot/Beltman's discovery responses as they relate to the indemnification issues (.9).	0.90 125.00/hr	112.50
10/14/11	- MMS	Conference with J. Mallary and R. Mussulman re case status and pending motions (.5).	0.50 125.00/hr	62.50
	- MMS	Prepare email to R. Mussulman re case status issues (.2).	0.20 125.00/hr	25.00
	- MMS	Analysis re case documents regarding DeGroot's opposition to MSJ (.6).	0.60 125.00/hr	75.00
10/17/11	- CS	Analysis re indemnity as a tort based remedy (.8).	0.80 100.00/hr	80.00
10/21/11	- CS	Analysis re basis for Standley Trenching's recovery against DeGroot on counterclaim (.6).	0.60 100.00/hr	60.00
	- CS	Prepare memo re research issues regarding MSJ appeal (2.4).	2.40 100.00/hr	240.00
	- CS	Analysis re Standley Trenching's motion for atty fees and costs after prevailing on MSJ (.8).	0.80 100.00/hr	80.00
	- CS	Analysis re recovery of atty fees for Standley Trenching on commercial transaction, IC Section 12-120(3) (1.5).	1.50 100.00/hr	150.00
10/25/11	- CS	Prepare proposed order granting Standley Trenching's MSJ (1.5).	1.50 100.00/hr	150.00
	- CS	Prepare proposed judgment re Standley Trenching (.5).	0.50 100.00/hr	50.00

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10/25/11	- CS	Prepare motion for atty fees and costs (.5).	0.50 100.00/hr	50.00
	- CS	Prepare memorandum in support of motion for atty fees and costs (1.5).	1.50 100.00/hr	150.00
10/26/11	- CS	Review case law citations in Standley Trenching's supplemental memo re DeGroot's satisfaction of judgment (.8).	0.80 100.00/hr	80.00
10/28/11	- CS	Analysis re DeGroot ability to set aside satisfaction of judgment given to Beltman (2.3).	2.30 100.00/hr	230.00
Total New Services:			372.50	\$43,412.50

EXPENSES

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Qty/Price</u>	
10/31/07	- CD	Copy expense - 2673 @ \$.10/page (in-house copying)	2,673 0.10	267.30
11/29/07	- CD	Copy expense - 706 @ \$.10/page	706 0.10	70.60
12/30/07	- CD	Copy expense - 8 @ \$.10/page	8 0.10	0.80
01/29/08	- CD	Copy expense - 239 copies @ \$.10/pg	239 0.10	23.90
02/29/08	- JD	Copy expense - 24 copies @ \$.10/pg	24 0.10	2.40
03/30/08	- JD	Copy expense - 76 copies @ \$.10/pg	76 0.10	7.60

Finance Charges of 1.5% Will Be Charged on All 30-Day Past Due Accounts
 Please Refer to the Account Number When Making Payments
 Thank You For Your Prompt Payment

SASSER & INGLIS, P.C.

Continental Western Group
 11201 Douglas Drive
 Urbandale, IA 50322
 Attn: Joseph G. Burkle

Page 29
 Billing Date: 10/31/2011
 Account No.: 6834
 MMS

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Qty/Price</u>	<u>AMOUNT</u>
07/21/08	- JD	Canyon County Clerk - Copy of File	1 18.00	13.00
07/30/08	- JD	Copy expense - 14 copies @ \$.10/pg	14 0.10	1.40
08/30/08	- JD	Copy expense - 6 copies @ \$.10/pg	6 0.10	0.60
02/28/10	- JD	Copy expense - 34 copies @ \$.10/pg	34 0.10	3.40
03/31/10	- FD	Copy expense - 59 copies @ \$.10/pg	59 0.10	5.90
04/30/10	- FD	Copy expense - 11 copies @ \$.10/pg	11 0.10	1.10
05/31/10	- FD	Copy expense - 16 copies @ \$.10/pg	16 0.10	1.60
08/31/10	- FD	Copy expense - 10 copies @ \$.10/pg	10 0.10	1.00
09/30/10	- JD	Copy expense - 13 copies @ \$.10/pg	13 0.10	1.30
10/31/10	- JD	Copy expense - 2 copies @ \$.10/pg	2 0.10	0.20
01/25/11	- JD	Elam & Burke - Mediation Services	1 887.50	887.50
01/31/11	- JD	Copy expense - 153 copies @ \$.10/pg	153 0.10	15.30
02/28/11	- JD	Copy expense - 153 copies @ \$.10/pg	153 0.10	15.30
03/31/11	- JD	Copy expense - 11 copies @ \$.10/pg	11 0.10	1.10

Finance Charges of 1.5% Will Be Charged on All 30-Day Past Due Accounts
 Please Refer to the Account Number When Making Payments
 Thank You For Your Prompt Payment

SASSER & INGLIS, P.C.

Continental Western Group
 11201 Douglas Drive
 Urbandale, IA 50322
 Attn: Joseph G. Burkle

Page 30
 Billing Date: 10/31/2011
 Account No.: 6834
 MMS

<u>DATE</u>	<u>INDIV</u>	<u>DESCRIPTION</u>	<u>Qty/Price</u>	<u>AMOUNT</u>
04/30/11	- JD	Copy expense - 21 copies @ \$.10/pg	21 0.10	2.10
05/31/11	- JD	Copy expense - 418 copies @ \$.10/pg	418 0.10	41.80
06/30/11	- JD	Copy expense - 443 copies @ \$.10/pg	443 0.10	44.30
08/31/11	- JD	Copy expense - 72 copies @ \$.10/pg	72 0.10	7.20
09/30/11	- JD	Copy expense - 380 copies @ \$.10/pg	380 0.10	38.00
10/31/11	- JD	Copy expense - 12 copies @ \$.10/pg	12 0.10	1.20
Total New Expenses:				<u>\$1,460.90</u>
Total New Services:			<u>372.50</u>	<u>\$44,873.40</u>

Finance Charges of 1.5% Will Be Charged on All 30-Day Past Due Accounts
 Please Refer to the Account Number When Making Payments
 Thank You For Your Prompt Payment
 1058

CHARLES DeGROOT and DeGROOT FARMS, LLC,)
)
)
Plaintiffs,)
vs.)
)
BELTMAN CONSTRUCTION, INC., dba BELTMAN WELDING AND CONSTRUCTION, a Washington corporation,)
)
Defendant/Third-Party Plaintiff,)
vs.)
)
STANDLEY TRENCHING, INC., dba STANDLEY & CO., an Idaho corporation; J. HOULE & FILS, INC., a Canadian corporation,)
)
Third-Party Defendants.)

COMES NOW the above-named Defendant/Third-Party Defendant Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley"), by and through undersigned counsel, and submits this memorandum of law in support of its motion for costs and attorney fees in this consolidated litigation.

BACKGROUND

The above-captioned litigation commenced on September 12, 2001, upon Charles DeGroot's and DeGroot Farms, LLC's (hereinafter "Plaintiffs") filing of a lawsuit against Standley. In this first lawsuit, DeGroot sued Standley directly upon various claims and causes of action including, but not limited, to breach of contract. Plaintiffs' attempt to recover from Standley ended when the Court granted Standley's motion for summary judgment filed in Case Number CV 01-7777. Standley prevailed on its motion for summary judgment due to the lack of a contract and privity of contract between Plaintiffs and Standley. Thereafter, former counsel for

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR COSTS AND ATTORNEY
FEES - 2.**

Standley, Michael E. Kelly, filed a Memorandum of Costs and Attorney Fees on April 18, 2005, supported by Affidavits and a Memorandum of Law, filed and lodged on April 19, 2005. The the hearing of Standley's initial request for costs and attorney fees was delayed pursuant to the filing of the Court's Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of the Case, in Case Number CV 01-7777, i.e., *DeGroot v. Standley*. In its Memorandum Decision, the Court noted that, "[A]lthough the Court has previously determined that Standley is the prevailing party regarding the claims in case number CV 2001-7777, in light of the consolidation of these two cases, along with the addition of the general contractor as a party and additional third party claims by the contractor against Standley, it appears that such a determination of who is the prevailing party is premature." Memorandum Decision, p. 3.

Thereafter, Plaintiffs sued Beltman Construction, Inc., dba, Beltman Welding and Construction (hereinafter Beltman), on March 4, 2005, and Beltman in turn sued Standley on a Third Party Complaint filed March 22, 2005. In April 2006, Beltman stipulated with Plaintiffs to entry of judgment against it. As part of the stipulated judgment, Beltman assigned its rights under its Third-Party Complaint to Plaintiffs, who then pursued the third party litigation against Standley.

The claims and causes of action that remained in the third party litigation by Plaintiffs against Standley were for breach of contract, breach of the implied UCC warranties, breach of the implied covenant of good faith and fair dealing, and rescission. Standley again moved for summary judgment on these remaining claims. Oral argument was heard on September 7, 2011. The Court announced its decision to grant Standley's Motion for Summary

Judgment during a telephonic status conference held on October 21, 2011. Thereafter, Judgment in favor Standley and against the Plaintiffs was entered on November 8, 2011.

Standley, as a prevailing party in both consolidated cases CV 01-7777 and CV 05-2277, seeks its attorney fees and costs incurred in the defense of this matter.

A. Standley Is Entitled to Its Attorney Fees In Both Cases.

1. *DeGroot v. Standley et. al.*, Case Number CV 01-7777.

As referred to above, Standley, through its former counsel, has previously submitted its Memorandum of Costs and Attorney Fees, supported by Affidavits and an accompanying Memorandum of Law. The fact of the most recent granting of summary judgment to Standley, coupled with entry of Judgment for Standley and against Plaintiffs, satisfies the Court's concern at the time of the issuance of its Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of the Case. The consolidated case is now at final resolution. Standley is the prevailing party in both Case Number CV 01-7777 and Case Number CV 05-2277.

In Standley's initial filings with the Court seeking award of its fees and costs in CV 01-7777, Standley argued that it was the prevailing party in a commercial transaction, entitling it to recovery of costs as a matter of right pursuant to I.R.C.P. 54(d)(1)(C). Standley also argued that as a prevailing party it should recover its attorney fees under I.C. §12-120(3) and under I.C. §12-121.

Standley's argument, founded upon I.C. §12-120(3), is simply that as a prevailing party in an action involving a commercial transaction, recovery of attorney fees are mandatory. *Merrill v. Gibson*, 139 Idaho 840, 845, 87 P.3d 949, 954 (2004). Standley correctly cited Idaho

case law for the proposition that the commercial transaction referenced by I.C. §12-120(3) must constitute the gravamen of the lawsuit and be integral to the claim and constitute a basis on which the party is attempting to recover. Memorandum in Support of Defendant Standley's Memorandum of Costs and Attorney Fees, p. 4. Standley noted that the, "facts underlying this case relate to the construction of a commercial dairy operation designed to handle over 2,500 head of milking cows and falls within the scope of a commercial transaction under I.C. § 12-120(3)." *Id.*, at p. 4. Standley then cited to Idaho case law holding that a party who successfully defends against the enforcement of a contract, in litigation in which the gravamen of the lawsuit is a commercial transaction, is entitled to recovery of its attorney fees, even though no contract exists or is unenforceable. *Id.*, at p. 4.

At the time of filing its initial Memorandum of Costs and Attorney Fees, Standley argued that even without a contract, in a commercial transaction, it was still entitled to an award of its attorney fees. *Id.*, at p. 4-5. Since the filing of its initial Memorandum of Costs and Attorney Fees, the Idaho Supreme Court has conclusively ruled that a contract is not necessary for a prevailing party in a commercial transaction to be awarded its attorney fees under I.C. § 12-120(3). *Blimka v. My Web Wholesaler*, 143 Idaho 723, 728, 152 P.3d 594, 599 (2007).

In fact, the Idaho Supreme Court held:

From time to time the Court has denied fees under I.C. §12-120(3) on the commercial transaction ground either because the claim sounded in tort or because no contract was involved. The commercial transaction ground in I.C. §12-120(3) neither prohibits a fee award for a commercial transaction that involves tortious conduct (*see Lettunich v. Key Bank Nat'l Ass'n*, 141 Idaho 362, 369, 109 P.3d 1104, 1111 (2005), **nor does it require that there be a contract. Any previous holdings to the contrary are overruled.**

Blimka, at p. 728-729; 599-600, (emphasis added).

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR COSTS AND ATTORNEY
FEES - 5.**

Therefore, because Standley is the prevailing party in a lawsuit in which a commercial transaction constituted the gravamen of the litigation, the commercial transaction is integral to Plaintiffs' claims and constituted the basis upon which Plaintiffs attempted to recover against Standley, Standley is entitled to an award of its attorney fees.

2. *Beltman v. Standley*, Case Number CV 05-2277.

Standley is also the prevailing party in litigation involving a commercial transaction in this second case and is entitled to an award of its attorney fees pursuant to I.C. § 12-120(3). Under the I.C. §12-120(3) analysis, this second case is distinguishable from the first case in that Beltman did have a contractual relationship with Standley. Further, the commercial transaction that is the gravamen of Beltman's third party action arises from Standley's work as a sub-contractor for Beltman installing the manure handling system at the DeGroot dairy. The commercial transaction is integral to the claims stated in Beltman's Third-Party Complaint and constitute the basis upon which Beltman attempted to recover against Standley. As such, Standley is entitled to recover its attorney fees as the prevailing party in a commercial transaction pursuant to I.C. §12-120(3). *Brower v. E.I. DuPont De Nemours and Co.*, 117 Idaho 780, 784, 792 P.2d 345, 349 (1990).

DeGroot is the party who actually pursued Standley in this second case, after Beltman stipulated to entry of a judgment against it in favor of DeGroot and gave DeGroot an assignment of Beltman's claims and causes of action stated in its Third-Party Complaint against Standley. The fact of the assignment by Beltman of its claims and causes of action stated in its Third-Party Complaint to DeGroot does not affect the analysis under I.C. § 12-120(3) as to an award of Standley's attorney fees. Thus, the pertinent elements of I.C. § 12-120(3) are still met

by Standley, i.e., Standley is the prevailing party in a commercial transaction. The commercial transaction forms the gravamen of the third party litigation. The commercial transaction is integral to the claims stated in the Third-Party Complaint and constitutes the basis upon which the party attempted to recover. *Brower v. E.I. DuPont De Nemours and Co.*, 117 Idaho, 780, 784, 792 P.2d 345, 349 (1990).

Thus, based upon I.C. § 12-120(3), Standley, as the prevailing party in litigation based upon a commercial transaction, is entitled to an award of its attorney fees.

3. Standley should also recover its attorney fees pursuant to I.C. § 12-121.

Standley's former attorney argued that attorney fees in Case Number CV 01-7777 were also recoverable by Standley under I.C. § 12-121 because DeGroot brought and pursued that litigation frivolously, unreasonably and without foundation, due to the fact that no contract nor privity of contract existed between DeGroot and Standley. Memorandum in Support of Defendant Standley's Memorandum for Costs and Attorney Fees, p. 5. Standley's former attorney further noted that, "once it is determined that an action has no legal merit against a named defendant it should be dismissed as to that defendant and continuing to proceed as to that defendant without a proper legal or factual basis by definition, renders the action frivolous. *Id.*, at p. 5; citing, *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989) and *Landvik by Landvik v. Herbert*, 130 Idaho 54, 62, 936 P.2d 697, 705 (Ct. App. 1997). These arguments provide a proper foundation upon which to award Standley its attorney fees in Case Number CV 01-7777.

The above-referenced legal principals also provide a sufficient basis for Standley to recover its attorney fees under I.C. § 12-121 in Case Number CV 05-2277. Standley

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR COSTS AND ATTORNEY
FEES - 7.**


converted its motion for partial summary judgment to a full motion for summary judgment after receipt and review of DeGroot's response memorandum dated August 30, 2011. In its response memorandum, DeGroot admitted that Beltman possessed independent damage claims, separate and distinct from DeGroot's damage claims against Standley. Therefore, DeGroot's acquisition of Beltman's third party complaint, by assignment, did nothing more than attempt to hand back to DeGroot its original damage claims which had previously been dismissed through entry of summary judgment in the first case. Thus, there is a proper basis pursuant to I.C. § 12-121 to award Standley its attorney fees incurred in Case Number CV 05-2277.

CONCLUSION

Based on the above, Standley respectfully requests that the Court award its mandatory costs incurred in Case Number CV 01-7777, its discretionary costs incurred in Case Number CV 05-2277, and its attorney fees incurred in both cases consolidated herein for the reason that, pursuant to I.C. 12-§ 120(3), Standley is the prevailing party in a commercial transaction. Further, that Standley be awarded its attorney fees in the consolidated litigation pursuant to I.C. § 12-121, for the reason that DeGroot brought and pursued both cases frivolously, unreasonably, and without foundation against Standley.

DATED this 22nd day of November, 2011.

SASSER & INGLIS, P.C.

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

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR COSTS AND ATTORNEY
FEES - 8.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 475-0101

Attorney for Plaintiffs/Counterdefendants
Charles DeGroot and DeGroot Farms, LLC

William A. McCurdy
702 W. Idaho, Ste. 1100
Boise, Idaho 83702

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission - 947-5910

Attorneys for Defendants/Third-Party
Defendant J. Houle & Fils, Inc.

Robert D. Lewis
Cantrill Skinner Sullivan & King, LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 345-7212


Attorneys for Counterclaimant Standley
Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet
District Judge
1115 Albany Street
Caldwell, Idaho 83605

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 455-6048

Alexa Medema
Law Clerk to Hon. Gregory Culet

Hand Delivery
 Email – amedema@3rdjd.net



M. Michael Sasser

6823 Memo in Supp of Mot for Atty Fees and Costs.doc

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR COSTS AND ATTORNEY
FEES - 9.**

FILED
11:50 A.M. P.M.

NOV 29 2011

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Robert D. Lewis, ISB No. 2713
CANTRILL, SKINNER, SULLIVAN & KING LLP
1423 Tyrell Lane
PO Box 359
Boise, Idaho 83701
Telephone: (208) 344-8035
Facsimile: (208) 345-7212

Attorneys for Counterclaimant/Respondent 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/Counter-
defendants/ Appellants,

vs.

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

Defendants/Respondents,

and

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

Counterclaimant/
Respondent.

Case Nos. CV 01-7777 ✓
CV 05-2277

**RESPONDENT / COUNTER-
CLAIMANT STANDLEY
TRENCHING, INC.'S REQUEST
FOR ADDITIONAL TRANSCRIPT
AND RECORD**

**RESPONDENT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 1**

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

BELTMAN CONSTRUCTION, INC.,
d/b/a BELTMAN WELDING AND
CONSTRUCTION, a Washington
corporation;

Defendant/Third-Party

Plaintiff,

vs.

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

Third-Party Defendants.

TO: THE ABOVE-NAMED APPELLANTS AND THEIR ATTORNEY OF
RECORD, KEVIN E. DINIUS, AND THE REPORTER AND CLERK
OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN, that the Respondent/Counterclaimant in
the above-entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion
of the following material in the reporter's transcript and the Clerk's Record in addition to
that required to be included by the I.A.R. and the Notice of Appeal. Any additional
transcript is to be provided in hard copy:

**RESPONDENT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 2**

1. Reporter's transcript:
 - a. The entire reporter's standard transcript as defined in Rule 25(a), I.A.R. for the hearing held on March 1, 2005; and
 - b. The entire reporter's standard transcript as defined in Rule 25(a), I.A.R. for the hearing held on May 31, 2005.
2. Clerk's Record:
 - a. Affidavit of Robert D. Lewis, with exhibits, dated January 31, 2005;
 - b. Affidavit of Kurt Standley, with exhibits, dated January 31, 2005;
 - c. Motion for Summary Judgment on Counterclaim, dated January 31, 2005, filed by Counterclaimant;
 - d. Memorandum in Support of Motion for Summary Judgment on Counterclaim, filed January 31, 2005;
 - e. Order Confirming Summary Judgment, dated March 28, 2005; and
 - f. Memorandum Decision Reserving Issue of Attorney Fees and Costs Until Final Resolution of Case, dated August 18, 2005.

**RESPONDENT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 3**

3. I certify that a copy of this request was served upon the reporter and clerk of the District Court and upon all parties required to be served pursuant to Rule 20.

DATED this 29th day of November, 2011.

CANTRILL SKINNER SULLIVAN & KING, LLP



Robert D. Lewis – Of the Firm
Attorneys for Respondent/Counterclaimant
Standley Trenching, Inc., d/b/a Standley &
Co.

**RESPONDENT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 4**

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November, 2011, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Kevin E. Dinius	<input type="checkbox"/>	Facsimile: (208) 475-0101
Michael J. Hanby, II	<input type="checkbox"/>	Hand Delivery
DINIUS LAW	<input checked="" type="checkbox"/>	U.S. Mail
5680 E. Franklin Rd. - Suite 130		
Nampa, ID 83687		
<i>Attorneys for Plaintiffs DeGroot & DeGroot Farms, LLC</i>		

William A. McCurdy	<input type="checkbox"/>	Facsimile: (208) 947-5910
MCCURDY LAW OFFICES	<input type="checkbox"/>	Hand Delivery
702 West Idaho Street - Suite 1100	<input checked="" type="checkbox"/>	U.S. Mail
Boise, ID 83702		
<i>Attorney for Defendant J. Houle & Fils, Inc.</i>		

M. Michael Sasser	<input type="checkbox"/>	Facsimile: (208) 344-8479
SASSER & INGLIS	<input type="checkbox"/>	Hand Delivery
1902 W. Judith Lane - Suite 100	<input checked="" type="checkbox"/>	U.S. Mail
PO Box 5880		
Boise, ID 83705		
<i>Attorneys for Third-Party Defendant Standley</i>		

Michael Kelly	<input type="checkbox"/>	Facsimile: (208) 342-4344
LOPEZ & KELLY PLLC	<input type="checkbox"/>	Hand Delivery
413 W. Idaho Street - Suite 100	<input checked="" type="checkbox"/>	U.S. Mail
PO Box 856		
Boise, ID 83701-0856		

**RESPONDENT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 5**

Laura Whiting
Court Reporter for the
Honorable Gregory M. Culet
CANYON COUNTY COURTHOUSE
1115 Albany Street
Caldwell, ID 83605

- Facsimile: (208) 454-7442
- Hand Delivery
- U.S. Mail



Robert D. Lewis

**RESPONDENT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 6**

M. Michael Sasser [ISB NO. 1666]
SASSER & INGLIS, P.C.
Attorneys at Law
1902 W. Judith Lane, Suite 100
P.O. Box 5880
Boise, Idaho 83705
Telephone No. (208) 344-8474
Facsimile No. (208) 344-8479
Email: mms@sasseringlis.com

FILED
A.M. 4:17 P.M.

NOV 30 2011
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Defendant/Respondent
Standley Trenching, Inc.

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

CHARLES DeGROOT and DeGROOT
FARMS, LLC,

Plaintiffs/
Appellants

vs.

STANDLEY TRENCHING, INC., dba
STANDLEY & CO.; J. HOULE & FILS, INC., a
Canadian corporation,

Defendants/
Respondents

and

STANDLEY TRENCHING, INC., dba
STANDLEY & CO.,

Counterclaimant/
Respondent.

Case No. CV 01-7777

**REQUEST FOR ADDITIONAL
TRANSCRIPT AND RECORD**

TO: THE ABOVE NAMED APPELLANTS and their Attorneys, KEVIN E. DINIUS AND
MICHAEL J. HANBY II, and the REPORTER AND CLERK OF THE ABOVE-ENTITLED
COURT.

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 1.

NOTICE IS HEREBY GIVEN, that Respondent Standley Trenching, Inc. hereby requests, pursuant to Rule 19, I.A.R., the inclusion of the following material in the reporter's transcript or the clerk's record in addition to that required to be included by the I.A.R. and the notice of appeal. Any additional transcript is to be provided in hard copy electronic format both (check one):

1. Reporter's transcript:
 - a. The entire reporter's transcript as defined in Rule 25(a), I.A.R. for the hearing held on March 1, 2005.
2. Clerk's Record:
 - a. Defendant Standley Trenching, Inc.'s Motion for Summary Judgment, dated January 31, 2005.
 - b. Defendant Standley Trenching, Inc.'s Memorandum in Support of Motion for Summary Judgment, dated January 31, 2005.
 - c. Affidavit of Michael E. Kelly in Support of Defendant Standley Trenching, Inc.'s Motion for Summary Judgment, with Exhibits, dated January 31, 2005.
 - d. Defendant Standley Trenching, Inc.'s Reply Memorandum on Motion for Summary Judgment, dated February 22, 2005.
 - e. Order Granting Defendant's Motion for Summary Judgment, filed March 22, 2005.
 - f. Satisfaction of Judgment in Case No. CV 05-2277, dated September 11, 2006, and filed on September 12, 2006.
 - g. Third-Party Defendant Standley's Response to Plaintiff's Motion to Reconsider Order Granting Defendant's (Standley) Motion for Summary Judgment Entered On March 13, 2005 and Request for Rule 11 Sanctions, dated May 2, 2007.

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 2.

- h. Standley Trenching, Inc.'s Memorandum in Opposition to Plaintiffs' Motion to Reconsider March 18, 2005, Order, dated March 25, 2010.
- i. Third-Party Defendant Standley's Motion for Summary Judgment, dated February 20, 2007.
- j. Third-Party Defendant Standley's Memorandum in Support of Motion for Summary Judgment, dated February 20, 2007.
- k. Affidavit of Counsel in Support of Third-Party Defendant Standley's Motion for Summary Judgment, with Exhibits, dated February 20, 2007.
- l. Third-Party Defendant Standley's Reply Memorandum in Support of Motion for Summary Judgment, dated March 14, 2007.
- m. Affidavit of Counsel in Support of Third-Party Defendant Standley's Reply Memorandum in Support of Motion for Summary Judgment, with Exhibits, dated March 14, 2007.
- n. Supplemental Brief in Support of Third-Party Defendant Standley's Motion for Summary Judgment, dated March 30, 2007.
- o. Affidavit of Counsel in Support of Supplemental Brief in Support of Third-Party Defendant Standley's Motion for Summary Judgment, with Exhibits, dated March 30, 2007.
- p. Supplemental Reply in Support of Third-Party Defendant Standley's Motion for Summary Judgment, dated April 5, 2007.
- q. Standley Trenching, Inc.'s Memorandum in Support of Motion in Limine, dated May 26, 2011.
- r. Standley Trenching, Inc.'s Memorandum in Support of Motion for Partial Summary Judgment, dated May 26, 2011.
- s. All Exhibits to Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Motion for Partial Summary Judgment, dated May 26, 2011. (Affidavit requested by Plaintiffs/Appellants at Number 6.26 in Notice of Appeal.)

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 3.

t. All Exhibits to Affidavit of M. Michael Sasser In Support of Standley Trenching, Inc.'s Supplemental Memorandum Regarding Its Motion for Summary Judgment and Motion in Limine (Indemnification Issue). (Affidavit requested by Plaintiffs/Appellants at Number 6.35 in Notice of Appeal.)

u. Judgment, dated November 8, 2011.

3. I certify that a copy of this Request for Additional Transcript and Record has been served on each court reporter of whom a transcript is requested as named below at the addresses set out below and that the estimated number of additional pages being requested is 100 - 200:

Name and address: Laura Whiting, Court Reporter for the Honorable Gregory M. Culet, Canyon County Courthouse, 1115 Albany Street, Caldwell, Idaho 83605.

I further certify that this request for additional record has been served upon the clerk of the district court and upon all parties required to be served pursuant to Rule 20.

DATED this 30th day of November, 2011.

SASSER & INGLIS, P.C.

By Clay Buckley for
M. Michael Sasser, Of the Firm
Attorneys for Defendant/Respondent
Standley Trenching, Inc., dba Standley & Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
 Michael J. Hanby II
 5680 E. Franklin Road, Suite 130
 Nampa, Idaho 83687

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Attorneys for Counterclaimant/Respondent
 Standley Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet
 District Judge
 1115 Albany Street
 Caldwell, Idaho 83605


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Alexa Medema
 Law Clerk to Hon. Gregory Culet

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Laura Whiting
 Court Reporter for the
 Honorable Gregory M. Culet
 1115 Albany Street
 Caldwell, Idaho 83605

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 M. Michael Sasser

6831 Req for Addl Transcript-Record.doc

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD - 5.

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Culet
FILED
 A.M. *5:00* P.M.

DEC 01 2011

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs

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

<p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Plaintiffs/Counterdefendants,</p> <p>-vs-</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., and J. HOULE & FILS, INC., a Canadian corporation;</p> <p>Defendants,</p> <p>and</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO.,</p> <p>Counterclaimant.</p>	<p>CASE NO. CV 2001-7777</p> <p>OBJECTION TO STANDLEY TRENCHING, INC.'S MOTION FOR COSTS AND ATTORNEY FEES</p>
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COME NOW, Plaintiffs CHARLES DeGROOT and DeGROOT FARMS, LLC (hereinafter, "DeGroot"), by and through their counsel of record, the law firm of Dinius &

Associates, PLLC and hereby object to Defendant/Third Party Defendant/Counterclaimant Standley Trenching, Inc.'s (hereinafter, "Standley") Motion for Costs and Attorneys' Fees.

A. Standard of Review

In Idaho, we adhere to the "American Rule" which requires that the parties bear their own fees absent statutory authorization or a contractual right. *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999) (citing *Idaho Dept. of Law Enforcement v. Kluss*, 125 Idaho 682, 684, 873 P.2d 1336, 1338 (1994)).

The Idaho Rules of Civil Procedure entitle the prevailing party in a civil action to receive costs and attorney fees when those fees are provided for by statute or contract. Idaho Rules of Civil Procedure 54(d)(1)(A); Idaho Rules of Civil Procedure 54(e)(1). Determination of the prevailing party for purposes of awarding costs and attorney fees is within the sound discretion of the trial court. *Decker v. Homeguard Sys.*, 105 Idaho 158, 161, 666 P.2d 1169, 1172 (Ct. App. 1983); Idaho Rules of Civil Procedure 54(d)(1)(B).

However, in making its determination the trial court must consider the result of the action in relation to the relief sought by the respective parties, whether there were multiple claims or issues, and the extent to which each party prevailed upon each issue or claim. *Chadderton v. King*, 104 Idaho 406, 411, 659 P.2d 160, 165 (Ct. App. 1983); Idaho Rules of Civil Procedure 54(d)(1)(B).

B. Given the Court's finding of no contractual privity, I.C. 12-120(3) is inapplicable

Idaho Code § 12-120(3) provides, in pertinent part, as follows:

In any civil action to recover on an open account...and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term, "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes.

Idaho courts use a two part test to determine whether attorney fees are proper under this section: (1) there must be a commercial transaction that is integral to the claim; and (2) the commercial transaction must be the basis upon which recovery is sought. *Brooks v. Gigray Ranches*, 128 Idaho 72, 78, 910 P.2d 744, 750 (1996). Indeed, "It has long been held that '[t]he critical test is whether the commercial transaction comprises the gravamen of the lawsuit; the commercial transaction must be integral to the claim and constitute a basis on which the party is attempting to recover.'" *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.* 136 Idaho 466, 471, 36 P.3d 218, 223 (2001), citing *Bingham v. Montane Resource Associates*, 133 Idaho at 426, 987 P.2d at 1041 (1999).

In determining the *amount* of attorney fees, the court is vested with discretion. *DeWills Interiors, Inc. v. Dines*, 106 Idaho 288, 678 P.2d 80 (1984). When considering the amount of attorney fees to be awarded under Idaho Code § 12-120, the court must consider the factors set forth in I.R.C.P. 54(e)(3). *Spidell v. Jenkins*, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986). The Rule 54(e)(3) factors include:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law; (4) the prevailing charges for like work; (5) whether the fee is fixed or contingent; (6) the time limitations imposed by the client or the circumstances of the case; (7) the amount involved and the results obtained; (8) the undesirability of the case; (9) the nature and length of the professional relationship with the client; (10) awards in similar cases; and (11) the reasonable cost of automated legal research, if the court finds it was reasonably necessary in preparing a party's case.

The court may also consider any other factor it deems appropriate in the particular case. I.R.C.P. 54(e)(3)(L).

Given the Court's finding that there is no contractual privity between DeGroot and Standley, it is patently unfair to assess fees against DeGroot based on a finding of a commercial

transaction. Therefore, Standley's argument that it is entitled to fees under Idaho Code § 12-120(3) should be denied.

C. Idaho Code 12-121 is inapplicable to this case

Idaho Code § 12-121 is not applicable to this case. To be awarded fees under this section, the Court generally must determine that the action was brought or defended frivolously. See *Thieme v. Worst*, 113 Idaho 455, 745 P.2d 1076 (Ct. App. 1987).

Here, as noted by the Court on several occasions, this case turned on the finding that DeGroot was not the intended beneficiary under the contract in question. DeGroot's position on this issue, while not adopted by the Court, is far from frivolous. In requesting a permissive appeal of that issue, it was also recognized by the Court that "this construction litigation involves a controlling question of law as to which there are substantial grounds for difference of opinion, including whether privity is necessary between an owner and subcontractor, or equipment manufacturer." *Order Approving Rule 12 Appeal by Permission*. The Court also stated "the question whether the lack of contractual privity bars the tort claims alleged by Plaintiffs is a controlling question of law with respect to which there are substantial grounds for difference of opinion." *Id.* As such, any argument that Plaintiff's claims were in any way frivolous must be disregarded.

D. The amount of fees claimed is unreasonable and excessive

What constitutes a "reasonable" fee is a discretionary determination for the trial court, to be guided by the criteria of I.R.C.P. 54(e)(3). *Kelly v. Hodges*, 119 Idaho 872, 876, 811 P.2d 48, 52 (Ct. App. 1991). The criteria include the time and labor required and any other factor which the court deems appropriate in the particular case. The court need not "blindly accept the figure advanced by [an] attorney." See *Craft Wall of Idaho, Inc. v. Stonebraker*, 108 Idaho 704, 706,

701 P.2d 324, 326 (Ct. App., 1985). Thus, an attorney cannot spend his or her time extravagantly and expect to be compensated by the party who has sanctions imposed. *Id.*

Although there were admittedly multiple issues involved in this case, it cannot be said that the issues involved – breach of contract, breach of warranties and consumer protection act violations – were particularly novel or complex. Similarly, Standley has not shown that this was a particularly undesirable case, thereby justifying the exorbitant amount of attorney fees sought.

Even more compelling to the argument against an award of attorney fees, however, is the complete lack of evidence as to who was performing the legal work for Standley and to the corresponding experience and hourly rates of the attorneys. For example, in conjunction with its memorandum of costs and attorney fees, Standley submitted affidavits of Mike Kelly, Robert Lewis and Kevin Trainor. Attached to each of the affidavits were billing logs for each law firm. Significantly, however, affidavits and billing logs submitted by Mr. Kelly and Mr. Trainor in no way identify which attorneys and paralegals from their firms were working on this case or the experience of those attorneys and paralegals. Indeed, Mr. Kelly's affidavit merely identifies the hourly rates of partners and associates. Without this information, it is simply impossible to determine whether the attorney fees requested are reasonable.

In addition, none of the affidavits identify the hourly rates for paralegals, nor do they identify that paralegal fees are requested. Yet, a review of the billing logs reveals that as many as three (3) paralegals may have worked on this case for Stephan, Kvanvig Stone & Trainor at a cost of \$807.00. Similarly, a review of the billing logs submitted by Howard Lopez & Kelly reveals that someone – most likely a paralegal – spent 66.8 hours indexing documents received from DeGroot in discovery. At \$70.00 per hour, this amounts to an overwhelming \$4,676.00. This is simply unreasonable.

Also unreasonable is the inclusion of \$851.53 in overhead costs in Mr. Trainor's billing log. The billing log shows that this was the amount expended on such items as postage, copies and faxes – including faxes “received.” Such costs are not properly included in an itemization of attorney fees and, in any event, are simply costs of doing business that should not be borne by DeGroot.

With respect to the fees incurred by Sasser & Inglis, P.C., a large portion of the time spent was purportedly in connection with Standley's decision to obtain substitute counsel. Great amounts of time were spent “getting up to speed” on the facts of the case, transferring the file, and dealing with substitute counsel issues. *See Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees*. In fact, it appears that every entry of time from 08/07/07 through at least 2/14/08 consists of Mr. Sasser getting up to speed. *Id.* Defendants cannot “double dip” and claim attorney fees and costs based on getting its new counsel up to speed. It would be patently unfair to allow Defendants to charge DeGroot twice for the same work.

Standley seeks in excess of \$200,000 for its fees and costs in this matter. The issues involved were not, at any stage of the litigation, particularly novel or complex. As such, it cannot be said that any specific expertise was required to litigate the claims or counterclaim. Likewise, Standley has not shown that this type of case is particularly undesirable or that there were particular pressures involved in litigating the claim or counterclaim. Excessive amounts of paralegal time and time spent “getting up to speed” were expended in this case. In light of these factors, Standley's request is excessive and the Court should exercise its discretion in reducing, or eliminating altogether, the amount of attorney fees.

E. Plaintiff's have failed to show that the claimed discretionary costs are "exceptional"

Idaho Rule of Civil Procedure 54(d)(1)(D) governs an award of discretionary costs awardable to a prevailing party. That Rule states:

Additional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph (C), may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary costs, the court may disallow on its own motion any such items of discretionary costs and shall make express findings supporting such disallowance.

Further, the Idaho Supreme Court has held that the district court's decision denying discretionary costs to defendant will be upheld where the district court's order clearly illustrated that it was aware that it had the discretion to award or deny the discretionary costs, and the court made express findings for each of the requested discretionary costs submitted by defendant and ultimately concluded that none of the requested costs was "exceptional." *Nampa & Meridian Irrigation Dist. V. Washing Fed. Sav.*, 135 Idaho 518, 20 P.3d 702 (2001). A district court will also be deemed to be acting within the bounds of its discretion even though it may not evaluate the costs item by item, if the district court makes express findings as required by subdivision (d)(1)(D) with regard to the general character of the requested costs. *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 136 Idaho 466, 36 P.3d 218 (2001).

In this case, none of the discretionary costs claimed by Standley can reasonably be classified as "exceptional." For example, Standley claims photocopy expenses of \$573.40 and mediation cost of \$887.50. Neither of these costs is in any way exceptional.

Additionally, it would be contrary to the expressly stated public policy of favoring settlement to allow a prevailing party the ability to claim mediation expenses as a cost. Parties would be much less willing to participate in mediation if it was understood that they could be

responsible for the entire cost of the mediation if their case fails to settle. For that reason alone, this Court should deny Defendant's claimed costs for mediation.

It must also be recognized that participating in mediation is standard in almost all cases. Quite often, the Court will order the parties to mediate. With that in mind, it is impossible for the Defendant to demonstrate that the mediation charges in this case were in any way "exceptional" as required by the Rule.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court deny Standley's request for fees and costs in its entirety. Alternatively, the Court should exercise its discretion to reduce the amount of attorney fees sought.

DATED this 1st day of December, 2011.

DINIUS LAW

By: 

Keyin E. Dinius
Michael J. Hanby II
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

M. Michael Sasser	<input type="checkbox"/>	US Mail
SASSER & INGLIS, PC	<input type="checkbox"/>	Overnight Mail
P.O. Box 5880	<input type="checkbox"/>	Hand Delivery
Boise, ID 83705	<input checked="" type="checkbox"/>	Facsimile - No. <u>344-8479</u>
William A. McCurdy	<input type="checkbox"/>	US Mail
702 W. Idaho St., Suite 1000	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Hand Delivery
	<input checked="" type="checkbox"/>	Facsimile - No. <u>947-5910</u>
Robert D. Lewis	<input type="checkbox"/>	US Mail
CANTRILL, SULLIVAN & KING	<input type="checkbox"/>	Overnight Mail
P.O. Box 359	<input type="checkbox"/>	Hand Delivery
Boise, Idaho 83701-0359	<input checked="" type="checkbox"/>	Facsimile - No. <u>345-7212</u>



for DINAUS LAW

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FILED
 A.M. 4 P.M.

DEC 05 2011

CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

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

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

CHARLES DeGROOT, and DeGROOT
 FARMS, LLC,

Plaintiffs/
 Counterdefendants,

vs.

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

Defendants,

and

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

Counterclaimant.

Case Nos. CV 01-7777
 CV 05-2277

**COUNTERCLAIMANT
 STANDLEY TRENCHING, INC.'S
 SUPPLEMENTAL MEMORANDUM
 SUPPORTING AN AWARD OF
 FEES**

**COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
 SUPPLEMENTAL MEMORANDUM SUPPORTING AN AWARD
 OF FEES - 1**

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

BELTMAN CONSTRUCTION, INC.,
d/b/a BELTMAN WELDING AND
CONSTRUCTION, a Washington
corporation;

Defendant/Third-Party
Plaintiff,

vs.

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

Third-Party Defendants.

COMES NOW Counterclaimant, Standley Trenching, Inc., d/b/a Standley & Co., ("Standley"), by and through its attorneys of record, CANTRILL, SKINNER, SULLIVAN & KING, LLP, and hereby presents this Memorandum to the Court in support of its claim for attorneys' fees on the Counterclaim.

Plaintiff has filed an objection to Standley's Request for Attorneys' Fees and Costs. That objection appears to focus on the Defendant Standley's Request. There should be no impediment to an award to Counterclaimant Standley.

**COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
SUPPLEMENTAL MEMORANDUM SUPPORTING AN AWARD
OF FEES - 2**

At the hearing on July 22, 2005, the Court ruled from the bench that: (1) this Counterclaim is based upon a commercial transaction; and (2) there is a statute that governs attorneys' fees applying to this matter, Idaho Code Section 12-120. This was an action on "open account." The Court also ruled that: (3) Counterclaimant Standley was a prevailing party. Summary Judgment has been issued to Standley both on the Counterclaim and against all claims made by Plaintiff DeGroot.

CONCLUSION

This Court has ruled that Standley prevails on all of Standley's claims against DeGroot and all of DeGroot's claims against Standley.

Counterclaimant Standley respectfully requests this Court to award its attorneys' fees. This action is final. The claim for attorneys' fees includes not only those fees sought in the Initial Memorandum, but also those fees sought through the Counterclaimant's Second Memorandum for Attorneys' Fees.

DATED this 5 day of December, 2011.

CANTRILL SKINNER SULLIVAN & KING, LLP



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

**COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
SUPPLEMENTAL MEMORANDUM SUPPORTING AN AWARD
OF FEES - 3**

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of December, 2011, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Kevin E. Dinius
Michael J. Hanby, II
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Judge's Copy to Chambers & amedema@3rdjd.net (Word Doc):
Honorable Gregory M. Culet
CANYON COUNTY COURTHOUSE
1115 Albany Street
Caldwell, ID 83605

Facsimile: (208) 454-7442
 Hand Delivery
 U.S. Mail


Robert D. Lewis

**COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S
SUPPLEMENTAL MEMORANDUM SUPPORTING AN AWARD
OF FEES - 4**

In the Supreme Court of the State of Idaho

FILED
A.M. 12:30 P.M.

DEC 06 2011

CANYON COUNTY CLERK
T RANDALL, DEPUTY

CHARLES JAY DE GROOT and DE GROOT)
 FARMS, LLC,)
)
 Plaintiffs-Counterdefendants-)
 Appellants,)
)
 v.)
)
 STANDLEY TRENCHING, INC., d/b/a)
 STANDLEY & CO.,)
)
 Defendant-Counterclaimant-)
 Respondent,)
)
 and)
)
 J. HOULE & FILS, INC., a Canadian)
 corporation,)
)
 Defendant-Respondent.)

ORDER RE: AMENDED NOTICE OF APPEAL

Supreme Court Docket No. 39406-2011
Canyon County Docket No. 2001-7777

The Notice of Appeal filed November 16, 2011 in District Court, requests the preparation of four transcripts. The certificate of service shows that the Notice of Appeal was served on Laura Whiting, who was the reporter for only two (2) hearing. Idaho Appellate Rules 17(o)(8)(a) requires name and address of each reporter of whom a transcript is requested. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the NOTICE OF APPEAL be, and hereby is, SUSPENDED for the reason it was not in compliance with the current version of I.A.R. 17(o); however, Appellant's counsel shall file an AMENDED NOTICE OF APPEAL showing service on the correct reporter with the District Court Clerk within fourteen (14) days from the date of this Order.

IT FURTHER IS ORDERED that this appeal is SUSPENDED until further notice.

DATED this 1 day of ^{December}~~November~~ 2011.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

FILED
 A.M. P.M.
 DEC 07 2011
 CANYON COUNTY CLERK
 L SANDOVAL, DEPUTY

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Attorneys for Plaintiffs/Appellants

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,)	
	)	CASE NO. CV 2001-7777
Plaintiffs/Appellants,	)	AMENDED NOTICE OF APPEAL
)	
-vs-)	
)	
STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., and J. HOULE & FILS, INC., a Canadian corporation;)	
)	
Defendants/Respondents.)	

TO: THE ABOVE NAMED RESPONDENTS, STANDLEY TRENCHING, INC. D/B/A STANDLEY & CO. AND J. HOULE & FILS, INC., AND THE CLERK OF THE ABOVE-ENTITLED COURT NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, CHARLES DeGROOT, and DeGROOT FARMS, LLC, for themselves and as assignees of BELTMAN CONSTRUCTION, INC. (collectively,

“DeGroot”), appeal against the above-named Respondents to the Idaho Supreme Court from the final orders entered in the above-entitled action on the March 22, 2005; July 24, 2007, and November 8, 2011, Honorable Gregory M. Culet presiding.

2. Appellants have a right to appeal to the Idaho Supreme Court, and the judgments described in Paragraph 1 above are appealable under and pursuant to Rule 11(a)(1), of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

3.1 Whether the Court erred in dismissing DeGroot’s contractual claims against Houle & Fils, Inc., pursuant to the Court’s Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.2 Whether the Court erred in dismissing DeGroot’s warranty claims against Houle & Fils, Inc., pursuant to the Court’s Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.3 Whether the Court erred in finding that DeGroot was not a third-party beneficiary of the contract between Standley Trenching, Inc., d/b/a Standley & Co. and Beltman Construction pursuant to the Court’s Order on Summary Judgment entered on March 22, 2005;

3.4 Whether the Court erred in dismissing DeGroot’s contractual claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court’s Order on Summary Judgment entered on March 22, 2005;

3.5 Whether the Court erred in dismissing DeGroot’s warranty claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court’s Order on Summary Judgment entered on March 22, 2005;

3.6 Whether the Court erred in dismissing DeGroot's claim for rescission pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.7 Whether the Court erred in dismissing DeGroot's claims under the Idaho Consumer Protection Act pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.8 Whether the Court erred in denying DeGroot's Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

3.9 Whether the Court erred in granting summary judgment in favor of Standley Trenching, Inc., d/b/a Standley & Co. on its counterclaim in the amount of \$20,259.57 with statutory interest of 12% along with attorney fees and costs;

3.10 Whether the Court erred in dismissing DeGroot's contractual claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.11 Whether the Court erred in dismissing DeGroot's warranty claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.12 Whether the Court erred in dismissing DeGroot's claim of rescission as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.13 Whether the Court erred in dismissing DeGroot's claims of indemnification and contribution as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011.

4. Has an order been entered sealing all or any portion of the record? No. If so, what portion? N/A

5. (a) Is a reporter's transcript requested?

Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript:

(1) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about June 18, 2007, on Defendant J. Houle & Fils, Inc.'s Motion for Summary Judgment;

(2) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about September 7, 2011, on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment;

(3) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about April 1, 2010, on Plaintiffs' Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

(4) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about October 21, 2011, on the district court's oral ruling on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment.

6. The Appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

6.1 Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.2 Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.3 Plaintiffs' Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.4 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.5 Defendant Houle's Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about June 11, 2007;

6.6 Plaintiffs' Memorandum in Opposition to Defendant Standley's Motion for Summary Judgment – filed February 15, 2005;

6.7 Affidavit of Kevin E. Dinius in Support of Memorandum in Opposition to Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Motion for Summary Judgment on Complaint and Counterclaim – filed February 15, 2005;

6.8 Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment – filed March 7, 2007;

6.9 Affidavit of Jill S. Holinka in Support of Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment – filed March 7, 2007;

6.10 Motion to Reconsider Order Granting Defendant's (Standley) Motion for Summary Judgment Entered on March 18, 2005 – filed April 27, 2007;

6.11 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 – filed April 27, 2007;

6.12 April 30, 2007 Order on Summary Judgment;

6.13 Order Determining Predominate Factor of Contract;

6.14 Third Party Defendant Standley Trenching, Inc. d/b/a Standley and Co.'s Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.15 Third Party Defendant Standley's Response to Plaintiffs' Motion to Reconsider Order Granting Defendant's [Standley] Motion for Summary Judgment entered on March 18, 2005 and Request for Rule 11 Sanctions;

6.16 Third-Party Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Supplement Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.17 Memorandum and Response to Standley Trenching Inc.'s Motion in Limine;

6.18 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Objection and Response to Standley Trenching Inc.'s Motion in Limine;

6.19 Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.20 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.21 Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.22 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice;

6.23 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice in Case No. CV 01-7777;

6.24 Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.25 Standley Trenching Inc.'s Motion in Limine;

6.26 Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.27 Plaintiff's Opposition to Defendant Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.28 Affidavit of Michael J. Hanby II in Support of Plaintiffs' Opposition to Defendant Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.29 Plaintiffs' Objection to Defendant Standley Trenching, Inc.'s Motion in Limine;

6.30 Standley Trenching, Inc.'s Reply to Memorandum in Support of Motion for Partial Summary Judgment;

6.31 Standley Trenching, Inc.'s Reply Memorandum in Support of its Motion in Limine;

6.32 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Motion in Limine;

6.33 Standley Trenching, Inc.'s Notice of Amendment of its Prior Motion for Partial Summary Judgment to Complete Motion for Summary Judgment Against Beltman Construction, Inc.;

6.34 Plaintiffs' Supplemental Briefing in Opposition to Motion in Limine;

6.35 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Supplemental Memorandum Regarding its Motion for Summary Judgment and Motion in Limine;

6.36 Standley Trenching, Inc.'s Supplemental Memorandum in Support of its Motion for Summary Judgment and Motion in Limine;

6.37 Order Granting Standley Trenching, Inc.'s Complete Motion for Summary Judgment as to all Claims and Causes of Action stated in Beltman Construction, Inc.'s Third Party Complaint.

7. I certify:

7.1 That a copy of this notice of appeal has been served on the reporter;

7.2 That the clerk of the district court will be paid the estimated fee of preparation of the reporter's transcript within the time required by rule after notice to Appellants of the amount of the estimated fee;

7.3 That the estimated fee for preparation of the clerk's record will be paid within the time required by rule after notice to Appellants of the amount of estimated fee;

7.4 That the appellate filing fee has been paid; and

7.5 That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 7th day of December, 2011.

DINIUS LAW

By: 

Kevin E. Dinius
Michael J. Hanby II
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2011, 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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[Signature]
for DINIUS LAW

FILED
A.M. 3:55 P.M.
DEC 13 2011

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CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs

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

<p>CHARLES DeGROOT, and DeGROOT FARMS, LLC,</p> <p>Plaintiffs/Counterdefendants,</p> <p>-vs-</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., and J. HOULE & FILS, INC., a Canadian corporation;</p> <p>Defendants,</p> <p>and</p> <p>STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO.,</p> <p>Counterclaimant.</p>	<p>CASE NO. CV 2001-7777</p> <p>OBJECTION TO DEFENDANT/ THIRD PARTY DEFENDANT/ COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S RENEWED MOTION FOR AWARD OF PREJUDGMENT INTEREST AND ENTRY OF AMENDED JUDGMENT ON COUNTERCLAIM</p>
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OBJECTION TO DEFENDANT/THIRD PARTY DEFENDANT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S RENEWED MOTION FOR AWARD OF PREJUDGMENT INTEREST AND ENTRY OF AMENDED JUDGMENT ON COUNTERCLAIM - 1

COME NOW, Plaintiffs CHARLES DeGROOT and DeGROOT FARMS, LLC (hereinafter, "DeGroot"), by and through their counsel of record, the law firm of Dinius & Associates, PLLC and hereby object to Defendant/Third Party Defendant/Counterclaimant Standley Trenching, Inc.'s (hereinafter, "Standley") Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim.

ARGUMENT

As argued previously, this case turned on the finding that DeGroot was not the intended beneficiary under the contract in question. This Court has recognized that this is far from a simple issue stating: "this construction litigation involves a controlling question of law as to which there are substantial grounds for difference of opinion, including whether privity is necessary between an owner and subcontractor, or equipment manufacturer." *Order Approving Rule 12 Appeal by Permission*. The Court also stated "the question whether the lack of contractual privity bars the tort claims alleged by Plaintiffs is a controlling question of law with respect to which there are substantial grounds for difference of opinion." *Id.*

While DeGroot disagrees with this Court's ruling, Standley cannot have it both ways. With this Court's ruling that there was not privity of contract and that DeGroot was not a third-party beneficiary, awarding Standley prejudgment interest would simply be inappropriate. Further, all of the work done leading to the counterclaim was warranty work that DeGroot was entitled to have performed. As such, Standley's should be denied prejudgment interest.


CONCLUSION

Based on the foregoing, CHARLES DeGROOT and DeGROOT FARMS, LLC respectfully requests that this Court deny Standley's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim.

OBJECTION TO DEFENDANT/THIRD PARTY DEFENDANT/COUNTERCLAIMANT STANDLEY TRENCHING, INC.'S RENEWED MOTION FOR AWARD OF PREJUDGMENT INTEREST AND ENTRY OF AMENDED JUDGMENT ON COUNTERCLAIM - 2

DATED this 13th day of December, 2011.

DINIUS LAW

By: 
Kevin E. Dinius
Michael J. Hanby II
Attorneys for Plaintiffs

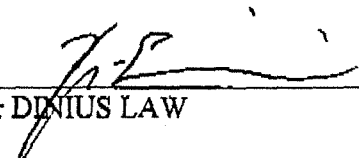
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

M. Michael Sasser	<input type="checkbox"/>	US Mail
SASSER & INGLIS, PC	<input type="checkbox"/>	Overnight Mail
P.O. Box 5880	<input type="checkbox"/>	Hand Delivery
Boise, ID 83705	<input checked="" type="checkbox"/>	Facsimile - No. <u>344-8479</u>

William A. McCurdy	<input type="checkbox"/>	US Mail
702 W. Idaho St., Suite 1000	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Hand Delivery
	<input checked="" type="checkbox"/>	Facsimile - No. <u>947-5910</u>

Robert D. Lewis	<input type="checkbox"/>	US Mail
CANTRILL, SULLIVAN & KING	<input type="checkbox"/>	Overnight Mail
P.O. Box 359	<input type="checkbox"/>	Hand Delivery
Boise, Idaho 83701-0359	<input checked="" type="checkbox"/>	Facsimile - No. <u>345-7212</u>


for DINIUS LAW

CHARLES DeGROOT and DeGROOT FARMS, LLC,)
)
Plaintiffs,)
vs.)
)
BELTMAN CONSTRUCTION, INC., dba BELTMAN WELDING AND CONSTRUCTION, a Washington corporation,)
)
Defendant/Third-Party Plaintiff,)
vs.)
)
STANDLEY TRENCHING, INC., dba STANDLEY & CO., an Idaho corporation; J. HOULE & FILS, INC., a Canadian corporation,)
)
Third-Party Defendants.)

COMES NOW the above-named Defendant/Third-Party Defendant Standley Trenching, Inc., d/b/a Standley & Co. (hereinafter "Standley"), by and through undersigned counsel, and submits this reply memorandum of law to Plaintiffs' Objection to Stanley Trenching, Inc.'s Motion for Costs and Attorney Fees in this consolidated litigation.

ARGUMENT

1. This Court's prior ruling of no-contractual privity between DeGroot and Standley does not avoid an award of attorney fees pursuant to I.C. §12-120(3).

Plaintiffs begin their objection by noting case law regarding the two-part test for determination of an award of attorney fees under I.C. §120-120(3), the "commercial transaction" attorney fee provision. [Objection to Standley Trenching, Inc.'s Motion for Costs and Attorney Fees, p. 3] From there, Plaintiffs next discuss the I.R.C.P. 54(e)(3) factors the Court may consider in exercising its discretion when determining the amount of attorney fees to be awarded.

DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND ATTORNEY FEES - 2.

[*Id.*] However, Plaintiffs offer no legal authority for their proposition that because this Court ruled that there is no contractual privity between DeGroot and Standley, "...it is patently unfair to assess fees against DeGroot on a finding of commercial transaction." [*Id.*]

Here, pursuant to the authority cited by Plaintiffs and Standley in its opening memorandum of law, a commercial transaction is integral to Plaintiffs' claims and that commercial transaction is the basis upon which recovery was sought. *Brooks v. Gigray Ranches*, 128 Idaho 72, 78, 910 P.2d 744, 750 (1996). Most notably, Plaintiffs have not taken issue with Standley's argument that the commercial transaction comprises the gravamen of the lawsuit. [Memorandum in Support of Defendant Standley's Memorandum of Costs and Attorney Fees, p. 4]. It is important to note that when Standley initially made this argument in April 2005, Idaho case law was uncertain as to whether the lack of a contract would impose attorney fees under I.C. §12-120(3) when a commercial transaction was involved between the litigating parties. Since then, the Idaho Supreme Court has conclusively held that a contract is not necessary for a prevailing party involved in a commercial transaction to be awarded its attorney fees pursuant to I.C. §12-120(3). *Blimka v. My Web Wholesaler*, 143 Idaho 723, 728, 152 P.3d 594, 599 (2007); *see also*, Standley's Memorandum of Law In Support of Its Motion for Costs and Attorney Fees, pgs. 5-6.

Plaintiffs objection to Standley being awarded its attorney fees under I.C. §12-120(3) is completely without merit in light of the holding in *Blimka*. The lack of contractual privity does not prevent Standley, as a prevailing party in a case involving a commercial transaction, to be awarded its attorney fees pursuant to I.C. §12-120(3). Therefore, awarding Standley its attorney fees under this statutory provision is not "patently unfair," rather such an

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
ATTORNEY FEES - 3.**

award of attorney fees is mandated under the *Blimka* decision. The question of "fairness" is irrelevant to the issue of an attorney fee award.

2. I.C. §12-121 serves as an alternate basis upon which an award of attorney fees may be made to Standley.

In Case No. CV 01-7777, Plaintiffs continued their litigation against Standley after the Court's ruling that there was no contractual privity between DeGroot and Standley, twice seeking reconsideration of the Court's March 1, 2005 Order granting Standley summary judgment. Plaintiffs' decision to continue to challenge this ruling is the behavior squarely implicated in Standley's citation to Idaho case law holding that, "once it is determined that an action has no legal merit against a named defendant it should be dismissed as to that defendant and continuing to proceed as to that defendant without a proper legal or factual basis, by definition, renders the action frivolous. [Memorandum in Support of Defendant Standley's Memorandum for Costs and Attorney Fees, dated April 18, 2005, p. 5; citing, *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989) and *Landvik by Landvik v. Herbert*, 130 Idaho 54, 62, 936 P.2d 697, 705 (Ct. App. 1997)]. The additional time devoted to the litigation in CV 01-7777 by Plaintiffs following the granting of summary judgment to Standley on the contractual privity issue renders Plaintiffs subject to an award of attorney fees under I.C. §12-121.

In Case No. CV 05-2277, as previously argued by Standley, because Beltman knew that it possessed no damage claims independent, separate and distinct from DeGroot's damages alleged against Standley, the assignment by Beltman of its third party causes of action to DeGroot amounted to nothing more than yet another end run attempt around the Court's "no privity" ruling in Case No. CV 01-7777. Thus, Plaintiffs continued to proceed against Standley after it had been determined that contractual privity was lacking between DeGroot and Standley. Rather than dismissing Standley from the consolidated litigation, Plaintiffs chose to forge ahead. Doing so without a proper legal or factual basis renders the litigation, by definition, frivolous. Therefore there is a proper basis under I.C. §12-121 to award Standley its attorney fees against Plaintiffs in CV-05 2277.

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
ATTORNEY FEES - 4.**

3. Standley's attorney fees are not unreasonable or excessive.

A. Novelty and complexity of the consolidated litigation.

Plaintiffs object to Standley's attorney fees arguing that the consolidated litigation was not overly novel or complex. [Objection to Standley Trenching, Inc.'s Motion for Costs and Attorney Fees, p. 5] However, a mere recitation of the claims or causes of action without context as to how those allegations were developed over the course of the decade long litigation fails to accurately portray just how novel and complex this litigation has been. The purse size and volume of the pleadings and documents generated during the course of this litigation attests to the novelty and complexity of the case. If the total amount of Standley's defense costs and fees is apportioned over the ten-year life of these cases, the average annual defense cost is approximately \$20,750.00.

B. Undesirability of the case.

Plaintiffs argue that Standley has not shown that the case was undesirable. [Objection to Standley Trenching, Inc.'s Motion for Costs and Attorney Fees, p. 5] Plaintiffs make this argument as if assigning the showing of undesirability is part of Standley's burden to obtain attorney fees as a prevailing party. Of course this isn't the case, as IRCP 54(e)(3) states, "[I]n the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:..." The "undesirability of a case" is but one factor enumerated under this rule, which together with the other enumerated factors, the Court is to consider. Standley need not make a showing that the litigation was particularly undesirable. The Court is to consider the undesirability of the litigation, together with the other enumerated factors in determining the attorney fees to award to Standley.

C. Performance of legal work on behalf of Standley.

Plaintiffs argue that there is a complete lack of showing as to who performed legal work for Standley and the corresponding experience and hourly rates of the attorneys. [Objection to Standley Trenching, Inc.'s Motion for Costs and Attorney Fees, p. 5] However, Plaintiffs then blur the lines between Standley's defense counsel and Standley's attorneys representing it on its Counterclaim. Any issue Plaintiffs have with attorney fees for Standley on

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
ATTORNEY FEES - 5.**

its Counterclaim are misplaced in an objection to Standley's costs and attorney fees incurred by Standley in defense of Plaintiffs' litigation.

Plaintiffs' arguments concerning who performed legal services for Standley and that attorney's experience are factors set forth under IRCP 54(e)(3) as follows:

- (A) The time and labor required; ...
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.

The Memorandum of Costs and Attorney Fees filed by the law firm of Sasser & Inglis, P.C., together with the supporting billing statements, depict the attorneys in the law firm who performed legal services on behalf of Standley, together with their years of experience and hourly rates. As for the legal work for Standley performed by attorney Kevin Trainor of the law firm, Stephan, Kvanvig, Stone & Trainor, or by attorney Michael E. Kelly of the law firm Kelly & Lopez, failure to separately state the attorneys in those law firms, their individual experience or hourly rates, does not render Standley's initial Memorandum of Costs and Attorney Fees invalid. Sufficient billing information has been submitted to the Court in support of Standley's initial Memorandum of Costs and Attorney Fees, thus this is not a situation where the Court lacks sufficient information concerning attorney fee billing and cannot properly exercise its discretion in making an award of attorney fees. *Sun Valley Potato Growers v. Texas Refinery Corp.*, 139 Idaho 761, 769, 86 P.3d 475, 483 (2004).

What governs the Court's consideration of the IRCP 54(e)(3) factors is whether sufficient information has been provided to the Court so that the Court has such information at its disposal when considering the factors stated under this rule. *Hackett v. Streeter*, 109 Idaho 261, 706 P.2d 1372 (Ct. App. 1985). Here, the Court can still arrive at a reasonable determination of an attorney fee to award Standley, as the Court has *itemized* billing statements submitted by all attorneys and their respective firms who have defended Standley during the decade of litigation this case has required. *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005). In support of Standley's initial Memorandum of Costs and Attorney Fees in April 2005, more than sufficient information was provided to the Court as to the attorney fee billings concerning the time and labor required. As to the ability of the attorneys, the fact that Standley prevailed on its initial

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
ATTORNEY FEES - 6.**

motion for summary judgment should be sufficient for the Court's consideration on that component of IRCP 54(e)(3).

D. Paralegal fees.

Plaintiffs argue that the Affidavits provided in support of Standley's Memorandum of Costs and Attorney Fees fail to identify the hourly rates for paralegals. Paralegal fees are not included in the billing statements submitted by Sasser & Inglis, P.C., as paralegal fees are not contemplated as awardable attorney fees or costs under IRCP 54(e)(3). *Perkins v. U.S. Transformer W.*, 132 Idaho 427, 974 P.2d 73 (1999). Standley Trenching, Inc. concedes the paralegal time included in the fee billings submitted on behalf of Standley in the initial Memorandum of Costs and Attorney Fees, in the amount of \$807.00 from the law firm of Stephen, Kvanvig, Stone & Trainor. [Supplemental Affidavit of M. Michael Sasser In Support of Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees, ¶ 4].

E. Attorney fee concessions by Standley.

In the interests of justice, and after consideration of Plaintiffs' objections, Standley concedes the attorney fees incurred by Standley for the services of M. Michael Sasser from August 7, 2007 through December 28, 2007, in the amount of \$4,687.50. [Supplemental Affidavit of M. Michael Sasser In Support of Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees, ¶ 4].

4. Standley's discretionary costs are exceptional.

The Court may award the claimed discretionary costs to Standley, as the prevailing party in this consolidated litigation, upon a showing that the costs were necessary and exceptional, reasonably incurred, and should in the interests of justice be assessed against the adverse party. [IRCP 54(d)(1)(D)]. It is important to note that "discretionary costs may include 'long distance phone calls, photocopying, faxes, travel expenses' and additional costs for expert witnesses." *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 307, 109 P.3d 161 (2004); citing, *Auto Club Ins. Co. v. Jackson*, 124 Idaho 874, 880, 865 P.2d 965, 971 (1993); *Bailey v. Sanford*, 139 Idaho 744, 755, 86 P.3d 458, 469 (2004), *emphasis added*.

The Idaho Supreme Court has construed IRCP 54(d)(1)(D) requiring that costs be exceptional, "to include those costs incurred because of the nature of the case was itself exceptional." *Hayden* at 168, 314, *emphasis added*. In *Great Plains Equipment v. Northwest Pipeline*, 136 Idaho 466, 36 P.3d 218, (2001), the Idaho Supreme Court upheld the trial court's award of expert witness fees because the claimed costs, "... were exceptional given the magnitude and nature of the case." *Id.* at 475, 227. The corollary of the trial court determining that the litigation is not exceptional, therefore denying requested discretionary costs, has also been upheld on appeal. *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 177 (1998). In *Great Plains*, notably, once the trial court deemed the litigation exceptional, it approved certain discretionary costs requested by the prevailing party and specifically commented upon the trial court's review of the claimed discretionary costs which included **photocopying**, travel, exhibit preparation, transcripts and expert witness fees. *Great Plains Equip.* at 226, 474. The Supreme Court further noted that the *Great Plains* trial court explained how those costs were exceptional, necessary and reasonably incurred given the nature and complexity of the case. *Id.* The *Great Plains Equip.* litigation arose from a natural gas pipeline and pumping station project located between Pocatello and Burley, Idaho. Delays in the contract resulted in the plaintiff leaving the job and not paying numerous sub-contractors, who then filed mechanics liens against the project. *Id.* at 221, 469. Most notable in determining whether this consolidated litigation arises to the level of exceptional is to compare it to the *Great Plains* litigation, which did not require ten years of litigation before the district court. Clearly, the magnitude of the present consolidated matter rises to the level of an exceptional litigation.

Plaintiffs suggest that Standley's modest photocopying expense is not exceptional. [Objection to Standley Trenching, Inc.'s Motion for Costs and Attorney Fees, p. 7] However, under the analysis required by Rule 54(d)(1)(D) as set forth above, once the Court deems the case exceptional, it is simply a matter of the Court exercising its discretion to allow Standley's discretionary costs for photocopying. The determination of "exceptional" is thus not limited to whether photocopy expense is exceptional, but whether the consolidated litigation, ten years in duration, arises to an exceptional case. The Court is well aware of the nature and extent of this litigation and the amount of the pleadings generated during the litigation, thereby

DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
ATTORNEY FEES - 8.

rendering the matter exceptional; thus providing the Court with discretion to award the amount sought by Standley for its photocopying expenses.

Once the exceptional element is met, the Court need only consider the other factors of "reasonable," "necessary" and whether the award of the discretionary cost is "in the interests of justice." Standley submits that in litigation of the size and magnitude of these consolidated proceedings, it was reasonable and necessary to incur the claimed photocopy expense. The only remaining prong is whether in the interest of justice, this discretionary cost should be assessed against Plaintiffs and awarded to Standley. In light of the fact that Standley is the prevailing party, the modest photocopy expense should be awarded to Standley.

CONCLUSION

Based on the above, Standley respectfully requests that the Court award its mandatory costs incurred in Case Number CV 01-7777; its discretionary costs incurred in Case Number CV 05-2277; and its attorney fees incurred in both cases consolidated herein for the reason that, pursuant to I.C. 12-§ 120(3), Standley is the prevailing party in a commercial transaction. Further, that Standley be awarded its attorney fees in the consolidated litigation pursuant to I.C. § 12-121, for the reason that DeGroot brought and pursued both cases frivolously, unreasonably, and without foundation against Standley.

DATED this 14th day of December, 2011.

SASSER & INGLIS, P.C.

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

DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
ATTORNEY FEES - 9.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of December, 2011, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin B. Dinius _____ Hand Delivery
 Michael J. Hanby II _____ United States Mail
 5680 B. Franklin Road, Suite 130 _____ Express Mail
 Nampa, Idaho 83687 _____ x Fax Transmission - 475-0101

Attorney for Plaintiffs/Counterdefendants
 Charles DeGroot and DeGroot Farms, LLC

William A. McCurdy _____ Hand Delivery
 702 W. Idaho, Ste. 1100 _____ United States Mail
 Boise, Idaho 83702 _____ Express Mail
 _____ x Fax Transmission - 947-5910


Attorneys for Defendants/Third-Party
 Defendant J. Houle & Pils, Inc.

Robert D. Lewis _____ Hand Delivery
 Conrill Skinner Sullivan & King, LLP _____ United States Mail
 1423 Tyrell Lane _____ Express Mail
 P.O. Box 359 _____ x Fax Transmission - 345-7212
 Boise, Idaho 83701

Attorneys for Counterclaimant Standley
 Trenching, Inc., dba Standley & Co.

Honorable Gregory M. Culet _____ Hand Delivery
 District Judge _____ United States Mail
 1115 Albany Street _____ Express Mail
 Caldwell, Idaho 83605 _____ x Fax Transmission - 455-6048

Aloxa Medema _____ Hand Delivery
 Law Clerk to Hon. Gregory Culet _____ x Email - amedema@3rdjd.net


 M. Michael Sasser

Reply Memo to DeGroot ObjectIn.doc

**DEFENDANT/THIRD-PARTY DEFENDANT STANDLEY TRENCHING, INC.'S REPLY
 MEMORANDUM TO PLAINTIFFS' OBJECTION TO MOTION FOR COSTS AND
 ATTORNEY FEES - 10.**

F I L E D
A.M. 2 2 0 P.M.

DEC 27 2011

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

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

CHARLES DeGROOT, and DeGROOT
FARMS, LLC,

Plaintiffs/
Counterdefendants,

vs.

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

Defendants,

and

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

Counterclaimant.

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

Case Nos. CV 01-7777
CV 05-2277

**AMENDED JUDGMENT ON
COUNTERCLAIM**

AMENDED JUDGMENT ON COUNTERCLAIM - 1

vs.

BELTMAN CONSTRUCTION, INC.,
d/b/a BELTMAN WELDING AND
CONSTRUCTION, a Washington
corporation;

Defendant/Third-Party
Plaintiff,

vs.

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

Third-Party Defendants.

The Court having considered the Memoranda and Affidavits filed herein, having heard oral argument, having granted Counterclaimant's Motion for Summary Judgment from the bench at the hearing on March 1, 2005, the Court having entered its Order Confirming Summary Judgment on March 28, 2005, and the Court awarded attorneys' fees and prejudgment interest to Counterclaimant when granting Counterclaimant's Motion to Amend Judgment at the hearing on December 20, 2011;

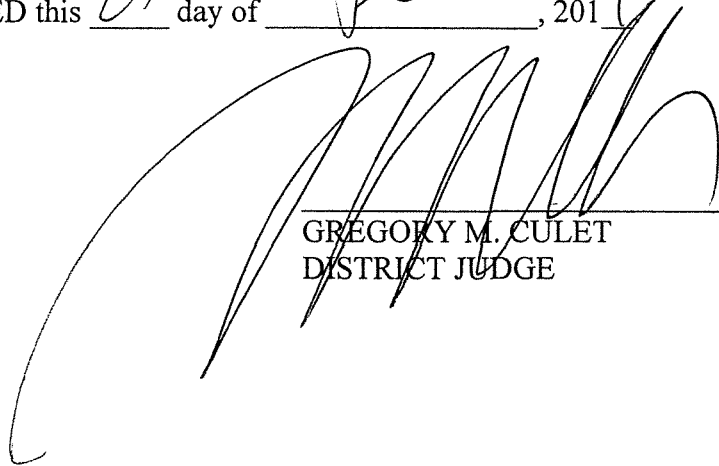
NOW THEREFORE, IT IS HEREBY ADJUDGED AND DECREED,
AND THIS DOES ORDER, ADJUDGE, AND DECREE that,

Counterclaimant Standley Trenching, Inc., d/b/a Standley & Co. have and recover Judgment on Counterclaim against the Counterdefendants Charles DeGroot and DeGroot Farms, LLC, as follows:

1. The sum of \$20,259.57, together with interest accrued at the statutory rate of 12% per annum from March 16, 2001, to November 8, 2011, in the sum of \$25,900.74, and attorneys' fees in the amount of \$17,972.50, are hereby awarded to Counterclaimant for a total judgment in the amount of \$64,132.81; and

2. An award of interest on the above-referenced total amount accruing after entry of Judgment at the highest legal rate allowed by law until paid in full.

DATED this 27 day of Dec, 2011



GREGORY M. CULET
DISTRICT JUDGE

F I L E D
A.M. 13 P.M.

DEC 29 2011

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

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

CHARLES DeGROOT, and DeGROOT
FARMS, LLC,

Plaintiffs/
Counterdefendants,

vs.

STANDLEY TRENCHING, INC., dba
STANDLEY & CO., and J. HOULE &
FILS, INC., a Canadian Corporation,

Defendants.

and

STANDLEY TRENCHING, INC., dba
STANDLEY & CO.,

Counterclaimant.

Case No. CV-2001-7777
CV-2005-2277

**ORDER ON COSTS AND
ATTORNEY FEES**

CHARLES DeGROOT, and DeGROOT
DAIRY, LLC,

Plaintiffs,

vs.

BELTMAN CONTRUCTION, INC.,
dba BELTMAN WELDING AND
CONSTRUCTION, a Washington corporation,

Defendant/
Third Party Plaintiff,

vs.

STANDLEY TRENCHING, INC., dba
STANDLEY & CO., an Idaho corporation,
and J. HOULE & FILS, INC.,

Third Party Defendants.

This matter came on for hearing before this Court on December 20, 2011. Kevin Dinius appeared on behalf of the plaintiff, Clay Shockley appeared on behalf of Standley as defendant, and Robert Lewis on behalf of Standley as counterclaimant. No one appeared on behalf of Houle.

The matters before the Court were defendant J. Houle Fils, Inc.'s (Houle) Motion for Costs and Fees, Standley Trenching, Inc. dba Standley & Co.'s (Standley) Motion for Costs and Fees and Renewed Motion for Prejudgment Interest as counterclaimant, and Standley's Motion for Costs and Fees as defendant. At the conclusion of the hearing, the Court found Standley to be the prevailing party, both as defendant and as counterclaimant. The Court denied Houle's motion for costs and fees, and granted Standley's motions as counterclaimant for costs and fees, as well for prejudgment interest. With respect to Standley as defendant, the Court took the issue

of attorney fees under advisement, but granted costs as a matter of right, subject to review as to the appropriate amounts under I.R.C.P. 54(d)(1).

Turning first to the issue of attorney fees, as the Court stated during the hearing on this matter, case CV-2001-7777 was largely a contract case that failed for lack of privity. Case CV-2005-2277 was likewise comprised of contractually based claims. Although a contract was not found to exist between the parties in the former case, the gravamen of both cases involved a commercial transaction. The actual existence of a contract is not necessary for a prevailing party in a commercial transaction to be awarded its attorney fees under I.C. § 12-120(3)), so long as the gravamen of the suit involves a commercial transaction. *Blimka v. My Web Wholesaler*, 143 Idaho 723, 728, 152 P.3d 594, 599 (2007); *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 136 Idaho 466, 471-73, 36 P.3d 218, 223-25 (2001). Therefore, this Court finds that attorney fees are appropriate pursuant to I.C. §12-120(3) under the facts of this case.

The calculation of the amount of attorney fees is committed to the sound discretion of the trial court. *Eastern Idaho Agricultural Credit Ass'n v. Neibaur*, 133 Idaho 402, 987 P.2d 314 (1999). In making its determination, the Court considered the factors set forth in Idaho Rule of Civil Procedure 54(e)(3) as follows:

(A) The time and labor required. This Court notes that there are two cases involving these parties, the first beginning in 2001, and the second in 2005. During the course of litigation, the parties attempted interlocutory appeals on two separate occasions. Both attempts were unsuccessful. In any event, this litigation has been ongoing for some considerable length of time.

(B) The novelty and difficulty of the questions. While the underlying issues in this case were not, in and of themselves novel, the facts of this case were somewhat unusual and made the issues somewhat more difficult.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law. As set forth above, the facts of this case were somewhat unusual, requiring the need for experienced counsel for all parties. The attorneys handling this case are all very experienced, both in general, and with respect to contracts and commercial litigation.

(D) The prevailing charges for like work. Lopez & Kelly, PLLC charged the hourly rate of \$125 for work performed by partners, and \$105 for that performed by associates. Sasser & Inglis, P.C., charged the hourly rate of \$125 per hour for work performed by partners, and \$100 per hour for work performed by associates. Stephan, Kvanvig, Stone, & Trainor charged \$130 per hour. The Court finds these charges to be consistent with the prevailing charges in this geographical area for like work.

(E) Whether the fee is fixed or contingent. The fees charged were hourly.

(F) The time limitations imposed by the client or the circumstances of the case. There were no such limitations in this case.

(G) The amount involved and the results obtained. Defendant Standley requests attorney fees spanning two cases and ten years. In case CV-2001-7777, pursuant to the initial memorandum of fees and costs, \$75,070.55 was sought in attorney fees. Since that initial request, Standley asserts it incurred additional attorney fees in the amount of \$73,096. In case CV-2005-2277, Standley incurred attorney fees in the amount of \$43,421.50.

Standley appropriately agreed to reduce requested attorney fees by \$4,687.50, which encompasses the time he spent from August 7, 2007, through December 28, 2007, bringing himself up to speed in this case. He also agreed to waive \$807 in paralegal fees.

Thus, the total attorney fees requested by Standley as defendant in these two cases is \$186,084.55.

(H) The undesirability of the case. This was not an undesirable case.

(I) The nature and length of the professional relationship with the client. There are no facts to indicate this is a factor in the award sought.

(J) Awards in similar cases. The fees requested are consistent with those in similar cases.

(K) The reasonable cost of automated legal research. No such sums have been requested.

See *Lettunich v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110, 120 (2005).

It is important to note the course of representation of Standley in this matter. The representation of Standley began in 2001, with Stephan, Kvanvig, Stone, & Trainor. Cantrill, Skinner, Sullivan & King, LLP took over representation on approximately October 15, 2002. On or around November 8, 2002, Lopez & Kelly took over the representation of Standley as defendant, while Cantrill Skinner remained as counsel for Standley with respect to the counterclaim. In August 2007, Sasser & Inglis, P.C. took over representation of Standley as defendant from Lopez & Kelly.

After carefully considering the factors set forth above, The Court awards attorney fees as follows:

<u>Stephan, Kvanvig, Stone, & Trainor</u>	68.9 hours allowed @ \$130/hour	\$8957
<u>Cantrill, Skinner, Sullivan, & King, LLP</u>	44.9 hours allowed @ \$130/hour	\$5,837
<u>Lopez & Kelly, PLLC</u>		
2001-2005	318.2 hours allowed @ \$125/hour	\$39,775
	124.3 hours allowed @ \$105/hour	\$13,051.5
2006-present	304.6 hours allowed @ \$125/hour	\$38,075
	287.6 hours allowed @ \$105/hour	\$30,198
<u>Sasser & Inglis, P.C.</u>		
	165.4 hours allowed @ \$125/hour	\$20,675
	132.8 hours allowed @ \$100/ hour	\$13,280

For a total attorney fees award of \$169,848.50.

Turning to the matter of costs, in case CV-2001-7777, pursuant to the initial memorandum of fees and costs, Standley sought \$3,927 as costs as a matter of right. Since that initial request, Standley asserts it incurred additional costs of \$10,502.70. In case CV-2005-2277, Standley asserts if incurred costs in the amount of \$1,460.90. At the hearing on this matter, and in the Supplemental Affidavit of M. Michael Sasser, Standley agreed to eliminate the request for mediation costs and discretionary costs, in the amount of \$887.50,

Thus, the total costs requested by Standley as defendant in these two cases are \$15,003.10. After careful consideration of the facts of this case, the following costs are awarded as a matter of right:

2001-2005

Filing Fee:	\$ 47
Depositions:	
Tom Beltman	\$ 104.74
Ernest DeGroot	\$ 566.39
Charles DeGroot	\$ 387.24
Continued Charles DeGroot	\$ 629.89
Tom Storm	\$ 413.23
Donald Bunke	\$ 376.46
Deposition Transcripts:	
Kurt Standley, Jeff Griggs, and Troy Hartzell:	\$1,402.38

2006 Through Present

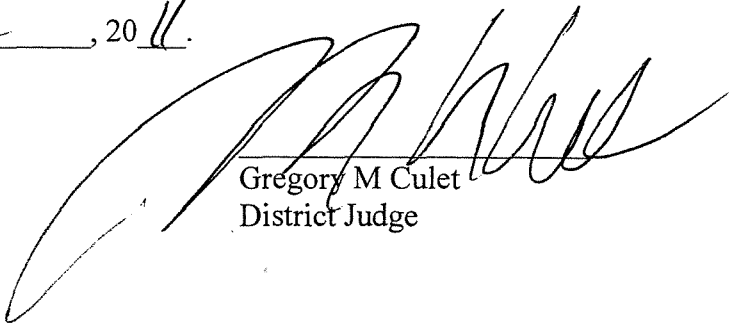
Actual fees for service	\$ 1,030.35
Witness fees	\$ 57.07
Depositions:	
Stan Beltman	\$ 89.50
M&M Court Reporting Invoices	\$ 793.56
Expert Witness fees:	
Dennis Burke	\$ 2,000.00
Intermountain Ag. Services	\$ 2,000.00
EAC Engineering, Inc.	\$ 650.00
Copies of Depositions	\$ 19.70
Travel Expense of witnesses:	
Earnest DeGroot	\$ 32.61

Andy Ward	\$	25.35
Bruce Cooper	\$	29.82
Gret Troost	\$	28.63
Jon Roth	\$	26.36

The total award for costs as a matter of right is \$10,710.28. The remaining costs requested either exceed the maximum allowable by Rule or are discretionary costs and are simply part of the costs of doing business and as such, are denied.

IT IS SO ORDERED.

Dated this 29 day of Dec, 2011.



Gregory M Culet
District Judge

CERTIFICATE OF SERVICE

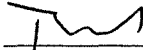
I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded to the following persons on this 29 day of December, 2011 :

Kevin Dinius
Michael J. Hanby, II
DINIUS LAW
5680 E. Franklin Rd. Ste. 130
Nampa, ID 83687
Attorney for Plaintiffs

William A. McCurdy
MCCURDY LAW OFFICES
702 West Idaho Street Ste. 1100
Boise, ID 83702
Attorney for Defendant J. Houle & Fils, Inc.

M. Michael Sasser
SASSER & INGLIS
1902 W. Judith Lane Ste, 100
Boise, ID 83705
Attorney for Defendant Standley

Robert D. Lewis
CANTRILL, SKINNER SULLIVAN & KING LLP
P.O. Box 359
Boise, ID 83701-0359
Attorney for Counterclaimant Standley



Deputy Clerk

Kevin E. Dinius
Michael J. Hanby II
DINIUS LAW
5680 E. Franklin Rd., Suite 130
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FILED
A.M. 4:05 P.M.

JAN 03 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs/Appellants

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

CASE NO. CV 2001-7777
SECOND AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, STANDLEY TRENCHING, INC. D/B/A STANDLEY & CO. AND J. HOULE & FILS, INC., AND THE CLERK OF THE ABOVE-ENTITLED COURT NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, CHARLES DeGROOT, and DeGROOT FARMS, LLC, for themselves and as assignees of BELTMAN CONSTRUCTION, INC. (collectively,

"DeGroot"), appeal against the above-named Respondents to the Idaho Supreme Court from the final orders entered in the above-entitled action on the March 22, 2005, July 24, 2007, November 8, 2011 and December 27, 2011, Honorable Gregory M. Culet presiding.

2. Appellants have a right to appeal to the Idaho Supreme Court, and the judgments described in Paragraph 1 above are appealable under and pursuant to Rule 11(a)(1), of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

3.1 Whether the Court erred in dismissing DeGroot's contractual claims against Houle & Fils, Inc., pursuant to the Court's Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.2 Whether the Court erred in dismissing DeGroot's warranty claims against Houle & Fils, Inc., pursuant to the Court's Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.3 Whether the Court erred in finding that DeGroot was not a third-party beneficiary of the contract between Standley Trenching, Inc., d/b/a Standley & Co. and Beltman Construction pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.4 Whether the Court erred in dismissing DeGroot's contractual claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.5 Whether the Court erred in dismissing DeGroot's warranty claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.6 Whether the Court erred in dismissing DeGroot's claim for rescission pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.7 Whether the Court erred in dismissing DeGroot's claims under the Idaho Consumer Protection Act pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.8 Whether the Court erred in denying DeGroot's Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

3.9 Whether the Court erred in granting summary judgment in favor of Standley Trenching, Inc., d/b/a Standley & Co. on its counterclaim in the amount of \$20,259.57 with statutory interest of 12% along with attorney fees and costs;

3.10 Whether the Court erred in dismissing DeGroot's contractual claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.11 Whether the Court erred in dismissing DeGroot's warranty claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.12 Whether the Court erred in dismissing DeGroot's claim of rescission as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.13 Whether the Court erred in dismissing DeGroot's claims of indemnification and contribution as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011.

3.14 Whether the Court erred in granting Standley Trenching, Inc., d/b/a Standley & Co. prejudgment interest and attorney fees for a total judgment amount of \$64,132.81 pursuant to the Court's Amended Judgment on Counterclaim entered December 27, 2011.

4. Has an order been entered sealing all or any portion of the record? No. If so, what portion? N/A

5. (a) Is a reporter's transcript requested?

Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript:

(1) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about June 18, 2007, on Defendant J. Houle & Fils, Inc.'s Motion for Summary Judgment;

(2) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about September 7, 2011, on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment;

(3) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about April 1, 2010, on Plaintiffs' Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

(4) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about October 21, 2011, on the district court's oral ruling on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment.

6. The Appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

6.1 Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.2 Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.3 Plaintiffs' Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.4 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.5 Defendant Houle's Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about June 11, 2007;

6.6 Plaintiffs' Memorandum in Opposition to Defendant Standley's Motion for Summary Judgment – filed February 15, 2005;

6.7 Affidavit of Kevin E. Dinius in Support of Memorandum in Opposition to Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Motion for Summary Judgment on Complaint and Counterclaim – filed February 15, 2005;

6.8 Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment – filed March 7, 2007;

6.9 Affidavit of Jill S. Holinka in Support of Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment – filed March 7, 2007;

6.10 Motion to Reconsider Order Granting Defendant's (Standley) Motion for Summary Judgment Entered on March 18, 2005 – filed April 27, 2007;

6.11 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 – filed April 27, 2007;

6.12 April 30, 2007 Order on Summary Judgment;

6.13 Order Determining Predominate Factor of Contract;

6.14 Third Party Defendant Standley Trenching, Inc. d/b/a Standley and Co.'s Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.15 Third Party Defendant Standley's Response to Plaintiffs' Motion to Reconsider Order Granting Defendant's [Standley] Motion for Summary Judgment entered on March 18, 2005 and Request for Rule 11 Sanctions;

6.16 Third-Party Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Supplement Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.17 Memorandum and Response to Standley Trenching Inc.'s Motion in Limine;

6.18 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Objection and Response to Standley Trenching Inc.'s Motion in Limine;

6.19 Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.20 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.21 Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.22 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice;

6.23 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice in Case No. CV 01-7777;

6.24 Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.25 Standley Trenching Inc.'s Motion in Limine;

6.26 Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.27 Plaintiff's Opposition to Defendant Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.28 Affidavit of Michael J. Hanby II in Support of Plaintiffs' Opposition to Defendant Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.29 Plaintiffs' Objection to Defendant Standley Trenching, Inc.'s Motion in Limine;

6.30 Standley Trenching, Inc.'s Reply to Memorandum in Support of Motion for Partial Summary Judgment;

6.31 Standley Trenching, Inc.'s Reply Memorandum in Support of its Motion in Limine;

6.32 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Motion in Limine;

6.33 Standley Trenching, Inc.'s Notice of Amendment of its Prior Motion for Partial Summary Judgment to Complete Motion for Summary Judgment Against Beltman Construction, Inc.;

6.34 Plaintiffs' Supplemental Briefing in Opposition to Motion in Limine;

6.35 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Supplemental Memorandum Regarding its Motion for Summary Judgment and Motion in Limine;

6.36 Standley Trenching, Inc.'s Supplemental Memorandum in Support of its Motion for Summary Judgment and Motion in Limine;

6.37 Order Granting Standley Trenching, Inc.'s Complete Motion for Summary Judgment as to all Claims and Causes of Action stated in Beltman Construction, Inc.'s Third Party Complaint.

7. I certify:

7.1 That a copy of this notice of appeal has been served on the reporter;

7.2 That the clerk of the district court will be paid the estimated fee of preparation of the reporter's transcript within the time required by rule after notice to Appellants of the amount of the estimated fee;

7.3 That the estimated fee for preparation of the clerk's record will be paid within the time required by rule after notice to Appellants of the amount of estimated fee;

7.4 That the appellate filing fee has been paid; and

7.5 That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 3rd day of January, 2012.

DINIUS LAW

By: 

Kevin E. Dinius
Michael J. Hanby II
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

M. Michael Sasser
SASSER & INGLIS, PC
P.O. Box 5880
Boise, ID 83705

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile - No. 344-8479

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

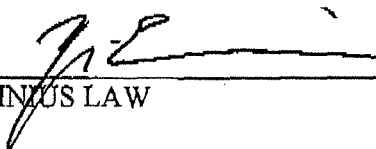
US Mail
 Overnight Mail
 Hand Delivery
 Facsimile - No. 947-5910

Robert D. Lewis
CANTRILL, SULLIVAN & KING
P.O. Box 359
Boise, Idaho 83701-0359

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile - No. 345-7212

Laura Whiting
Court Reporter for the Honorable Gregory M. Culet
Canyon County Courthouse
1115 Albany St.
Caldwell, ID 83605

US Mail
 Overnight Mail
 Hand Delivery
 Facsimile - No.



for DINIUS LAW

Kevin E. Dinius
Michael J. Hanby II
DINIUS LAW
5680 E. Franklin Rd., Suite 130
Nampa, Idaho 83687
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Facsimile: (208) 475-0101
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kdinius@diniuslaw.com
mhanby@diniuslaw.com

FILED
A.M. 3:40 P.M.

JAN 13 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs/Appellants

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/Appellants,

-vs-

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

Defendants/Respondents.

CASE NO. CV 2001-7777

THIRD AMENDED NOTICE OF
APPEAL

TO: THE ABOVE NAMED RESPONDENTS, STANDLEY TRENCHING, INC. D/B/A
STANDLEY & CO. AND J. HOULE & FILS, INC., AND THE CLERK OF THE ABOVE-
ENTITLED COURT NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, CHARLES DeGROOT, and DeGROOT FARMS, LLC, for themselves and as assignees of BELTMAN CONSTRUCTION, INC. (collectively, "DeGroot"), appeal against the above-named Respondents to the Idaho Supreme Court from the

final orders entered in the above-entitled action on the March 22, 2005, July 24, 2007, November 8, 2011, December 27, 2011 and December 29, 2011, Honorable Gregory M. Culet presiding.

2. Appellants have a right to appeal to the Idaho Supreme Court, and the judgments described in Paragraph 1 above are appealable under and pursuant to Rule 11(a)(1), of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

3.1 Whether the Court erred in dismissing DeGroot's contractual claims against Houle & Fils, Inc., pursuant to the Court's Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.2 Whether the Court erred in dismissing DeGroot's warranty claims against Houle & Fils, Inc., pursuant to the Court's Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.3 Whether the Court erred in finding that DeGroot was not a third-party beneficiary of the contract between Standley Trenching, Inc., d/b/a Standley & Co. and Beltman Construction pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.4 Whether the Court erred in dismissing DeGroot's contractual claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.5 Whether the Court erred in dismissing DeGroot's warranty claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.6 Whether the Court erred in dismissing DeGroot's claim for rescission

pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.7 Whether the Court erred in dismissing DeGroot's claims under the Idaho Consumer Protection Act pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.8 Whether the Court erred in denying DeGroot's Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

3.9 Whether the Court erred in granting summary judgment in favor of Standley Trenching, Inc., d/b/a Standley & Co. on its counterclaim in the amount of \$20,259.57 with statutory interest of 12% along with attorney fees and costs;

3.10 Whether the Court erred in dismissing DeGroot's contractual claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.11 Whether the Court erred in dismissing DeGroot's warranty claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.12 Whether the Court erred in dismissing DeGroot's claim of rescission as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.13 Whether the Court erred in dismissing DeGroot's claims of indemnification and contribution as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011.

3.14 Whether the Court erred in granting Standley Trenching, Inc., d/b/a

Standley & Co. prejudgment interest and attorney fees for a total judgment amount of \$64,132.81 pursuant to the Court's Amended Judgment on Counterclaim entered December 27, 2011.

3.15 Whether the Court erred in granting Defendant Standley Trenching, Inc., d/b/a Standley & Co. attorney fees and costs for a total judgment amount of \$180,558.78 pursuant to the Court's Order on Costs and Attorney Fees entered December 29, 2011.

4. Has an order been entered sealing all or any portion of the record? No. If so, what portion? N/A

5. (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript:

(1) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about June 18, 2007, on Defendant J. Houle & Fils, Inc.'s Motion for Summary Judgment;

(2) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about September 7, 2011, on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment;

(3) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about April 1, 2010, on Plaintiffs' Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

(4) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about October 21, 2011, on

the district court's oral ruling on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment.

(5) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about December 20, 2011, on the district court's oral ruling on Counterclaimant Standley Trenching, Inc.'s Renewed Motion for Award of Prejudgment Interest, Defendant Standley Trenching, Inc.'s Motion for Attorney Fees and Costs and DeGroot's Objection to Attorney Fees and Costs.

6. The Appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

6.1 Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.2 Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.3 Plaintiffs' Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.4 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.5 Defendant Houle's Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about June 11, 2007;

6.6 Plaintiffs' Memorandum in Opposition to Defendant Standley's Motion for Summary Judgment – filed February 15, 2005;

6.7 Affidavit of Kevin E. Dinius in Support of Memorandum in Opposition to Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Motion for Summary Judgment on Complaint and Counterclaim – filed February 15, 2005;

6.8 Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment -- filed March 7, 2007;

6.9 Affidavit of Jill S. Holinka in Support of Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment -- filed March 7, 2007;

6.10 Motion to Reconsider Order Granting Defendant's (Standley) Motion for Summary Judgment Entered on March 18, 2005 -- filed April 27, 2007;

6.11 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 -- filed April 27, 2007;

6.12 April 30, 2007 Order on Summary Judgment;

6.13 Order Determining Predominate Factor of Contract;

6.14 Third Party Defendant Standley Trenching, Inc. d/b/a Standley and Co.'s Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.15 Third Party Defendant Standley's Response to Plaintiffs' Motion to Reconsider Order Granting Defendant's [Standley] Motion for Summary Judgment entered on March 18, 2005 and Request for Rule 11 Sanctions;

6.16 Third-Party Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Supplement Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.17 Memorandum and Response to Standley Trenching Inc.'s Motion in Limine;

6.18 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Objection and Response to Standley Trenching Inc.'s Motion in Limine;

6.19 Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.20 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.21 Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.22 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc, with Prejudice;

6.23 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice in Case No. CV 01-7777;

6.24 Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.25 Standley Trenching Inc.'s Motion in Limine;

6.26 Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.27 Plaintiff's Opposition to Defendant Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.28 Affidavit of Michael J. Hanby II in Support of Plaintiffs' Opposition to Defendant Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.29 Plaintiffs' Objection to Defendant Standley Trenching, Inc.'s Motion in Limine;

6.30 Standley Trenching, Inc.'s Reply to Memorandum in Support of Motion for Partial Summary Judgment;

6.31 Standley Trenching, Inc.'s Reply Memorandum in Support of its Motion in Limine;

6.32 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Motion in Limine;

6.33 Standley Trenching, Inc.'s Notice of Amendment of its Prior Motion for Partial Summary Judgment to Complete Motion for Summary Judgment Against Beltman Construction, Inc.;

6.34 Plaintiffs' Supplemental Briefing in Opposition to Motion in Limine;

6.35 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Supplemental Memorandum Regarding its Motion for Summary Judgment and Motion in Limine;

6.36 Standley Trenching, Inc.'s Supplemental Memorandum in Support of its Motion for Summary Judgment and Motion in Limine;

6.37 Order Granting Standley Trenching, Inc.'s Complete Motion for Summary Judgment as to all Claims and Causes of Action stated in Beltman Construction, Inc.'s Third Party Complaint;

6.38 Counterclaimant's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim;

6.39 Affidavit of Robert D. Lewis in Support of Counterclaimant's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim;

6.40 Counterclaimant's Second Memorandum of Attorneys Fees;

6.41 Defendant/Third Party Defendant Standley Trenching, Inc.'s Motion for Costs and Attorney Fees;

6.42 Defendant/Third Party Defendant Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees;

6.43 Defendant Standley Trenching, Inc.'s Supplemental Memorandum of Costs and Attorney Fees;

6.44 Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees;

6.45 Affidavit of Michael Kelly in Support of Standley Trenching, Inc.'s Supplemental Memorandum of Costs and Attorney Fees;

6.46 Defendant/Third Party Defendant Standley Trenching Inc.'s Memorandum of Law in Support of Motion for Costs and Attorney Fees;

6.47 Objection to Standley Trenching Inc.'s Motion for Costs & Attorney Fees;

6.48 Standley Trenching Inc.'s Supplemental Memorandum Supporting an Award of Fees;

6.49 Objection to Defendant/Third Party Defendant/Counterclaimant Standley Trenching Inc.'s Renewed Motion for award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim;

6.50 Defendant/Third Party Defendant Standley Trenching Inc.'s Reply Memorandum to Plaintiff's Objection to Motion for Costs and Attorney Fees;

6.51 Amended Judgment on Counterclaim (\$64,132.81);

6.52 Order on Costs and Attorney Fees (\$180,558.78).

7. I certify:

7.1 That a copy of this notice of appeal has been served on the reporter;


7.2 That the clerk of the district court will be paid the estimated fee of preparation of the reporter's transcript within the time required by rule after notice to Appellants of the amount of the estimated fee;

7.3 That the estimated fee for preparation of the clerk's record will be paid within the time required by rule after notice to Appellants of the amount of estimated fee;

- 7.4 That the appellate filing fee has been paid; and
- 7.5 That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 13th day of January, 2012.

DINIUS LAW

By: 
 Kevin E. Dinius
 Michael J. Hanby II
 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

M. Michael Sasser SASSER & INGLIS, PC P.O. Box 5880 Boise, ID 83705	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	US Mail Overnight Mail Hand Delivery Facsimile - No. <u>344-8479</u>
William A. McCurdy 702 W. Idaho St., Suite 1000 Boise, ID 83702	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	US Mail Overnight Mail Hand Delivery Facsimile - No. <u>947-5910</u>
Robert D. Lewis CANTRILL, SULLIVAN & KING P.O. Box 359 Boise, Idaho 83701-0359	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	US Mail Overnight Mail Hand Delivery Facsimile - No. <u>345-7212</u>
Laura Whiting Court Reporter for the Honorable Gregory M. Culet Canyon County Courthouse 1115 Albany St. Caldwell, ID 83605	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	US Mail Overnight Mail Hand Delivery Facsimile - No.


 for DINIUS LAW

cm\T:\Clients\D\DeGroot Dairy, LLC\Standley & Co.-19213\Appeal - 2011\3rd Amended Notice of Appeal.docx

CHARLES DeGROOT and DeGROOT)
FARMS, LLC,)
)
Plaintiffs,)
vs.)
)
BELTMAN CONSTRUCTION, INC., dba)
BELTMAN WELDING AND)
CONSTRUCTION, a Washington corporation,)
)
Defendant/Third-Party)
Plaintiff,)
vs.)
)
STANDLEY TRENCHING, INC., dba)
STANDLEY & CO., an Idaho corporation;)
J. HOULE & FILS, INC., a Canadian)
corporation,)
Third-Party Defendants.)

The Court having entered Judgment herein on November 8, 2011, following the granting of summary judgment in favor of Defendant Standley Trenching, Inc. on November 8, 2011, and having thereafter considered the Memoranda and Affidavits filed by Standley Trenching, Inc. in support of its Memorandum of Costs and Attorney Fees, and following oral argument thereon on December 20, 2011, entered its Order on Costs and Attorney Fees on December 29, 2011.

NOW THEREFORE, IT IS HEREBY ADJUDGED AND DECREED, AND THIS DOES ORDER, ADJUDGE AND DECREE that:

Defendant Standley Trenching, Inc. have and recover Judgment against Plaintiffs, Charles DeGroot and DeGroot Farms, LLC, as follows:

1. Attorneys fees in the amount of \$169,848.50 and costs in the amount of \$10,710.28, for a total Judgment amount of \$180,558.78; and

2. An award of interest on the above-referenced total amount accruing after entry of Judgment herein at the highest legal rate allowed by law until paid in full.

DATED this 17TH day of January, 2012.

James C. M... [Signature]
SNICK District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of January, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kevin E. Dinius
Michael J. Hanby II
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687
**Attorney for Plaintiffs/Counterdefendants
Charles DeGroot and DeGroot Farms, LLC**

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 475-0101

William A. McCurdy
Attorney at Law
702 W. Idaho, Ste. 1100
Boise, Idaho 83702
**Attorneys for Defendants/Third-Party Defendant J.
Houlé & Fils, Inc.**

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission - 947-5910

Robert D. Lewis
Cantrill Skinner Sullivan & King, LLP
1423 Tyrell Lane
P.O. Box 359
Boise, Idaho 83701
**Attorneys for Counterclaimant Standley
Trenching, Inc., dba Standley & Co.**

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 345-7212

M. Michael Sasser
Sasser & Inglis, P.C.
P.O. Box 5880
Boise, Idaho 83705
**Attorneys for Defendant/Third Party Defendant
Standley Trenching, Inc., dba Standley & Co.**

Hand Delivery
 United States Mail
 Express Mail
 Fax Transmission – 344-8479

[Signature]

Clerk

Kevin E. Dinius
 Michael J. Hanby II
 DINIUS LAW
 5680 E. Franklin Rd., Suite 130
 Nampa, Idaho 83687
 Telephone: (208) 475-0100
 Facsimile: (208) 475-0101
 ISB Nos.: 5974, 7997
 kdinius@diniuslaw.com
 mhanby@diniuslaw.com

FILED
 A.M. 7:25 P.M.

JAN 23 2012

CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

Attorneys for Plaintiffs/Appellants

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/Appellants,

-vs-

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

Defendants/Respondents.

CASE NO. CV 2001-7777

**FOURTH AMENDED NOTICE OF
 APPEAL**

TO: THE ABOVE NAMED RESPONDENTS, STANDLEY TRENCHING, INC. D/B/A
 STANDLEY & CO. AND J. HOULE & FILS, INC., AND THE CLERK OF THE ABOVE-
 ENTITLED COURT NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, CHARLES DeGROOT, and DeGROOT FARMS, LLC, for themselves and as assignees of BELTMAN CONSTRUCTION, INC. (collectively, "DeGroot"), appeal against the above-named Respondents to the Idaho Supreme Court from the

final orders entered in the above-entitled action on the March 22, 2005, July 24, 2007, November 8, 2011, December 27, 2011 and December 29, 2011, Honorable Gregory M. Culet presiding.

2. Appellants have a right to appeal to the Idaho Supreme Court, and the judgments described in Paragraph 1 above are appealable under and pursuant to Rule 11(a)(1), of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

3.1 Whether the Court erred in dismissing DeGroot's contractual claims against Houle & Fils, Inc., pursuant to the Court's Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.2 Whether the Court erred in dismissing DeGroot's warranty claims against Houle & Fils, Inc., pursuant to the Court's Order of Dismissal of Claims Against Defendant Houle & Fils, Inc. with prejudice in Case No. CV01-7777;

3.3 Whether the Court erred in finding that DeGroot was not a third-party beneficiary of the contract between Standley Trenching, Inc., d/b/a Standley & Co. and Beltman Construction pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.4 Whether the Court erred in dismissing DeGroot's contractual claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.5 Whether the Court erred in dismissing DeGroot's warranty claims against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.6 Whether the Court erred in dismissing DeGroot's claim for rescission

pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.7 Whether the Court erred in dismissing DeGroot's claims under the Idaho Consumer Protection Act pursuant to the Court's Order on Summary Judgment entered on March 22, 2005;

3.8 Whether the Court erred in denying DeGroot's Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

3.9 Whether the Court erred in granting summary judgment in favor of Standley Trenching, Inc., d/b/a Standley & Co. on its counterclaim in the amount of \$20,259.57 with statutory interest of 12% along with attorney fees and costs;

3.10 Whether the Court erred in dismissing DeGroot's contractual claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.11 Whether the Court erred in dismissing DeGroot's warranty claims as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.12 Whether the Court erred in dismissing DeGroot's claim of rescission as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011;

3.13 Whether the Court erred in dismissing DeGroot's claims of indemnification and contribution as an assignee of Beltman Construction, Inc., against Standley Trenching, Inc., d/b/a Standley & Co. pursuant to the Court's Order on Summary Judgment entered November 8, 2011.

3.14 Whether the Court erred in granting Standley Trenching, Inc., d/b/a

Standley & Co. prejudgment interest and attorney fees for a total judgment amount of \$64,132.81 pursuant to the Court's Amended Judgment on Counterclaim entered December 27, 2011.

3.15 Whether the Court erred in granting Defendant Standley Trenching, Inc., d/b/a Standley & Co. attorney fees and costs for a total judgment amount of \$180,558.78 pursuant to the Court's Order on Costs and Attorney Fees entered December 29, 2011 **and Amended Judgment for Costs and Attorney Fees entered January 17, 2012.**

4. Has an order been entered sealing all or any portion of the record? No. If so, what portion? N/A

5. (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript:

(1) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about June 18, 2007, on Defendant J. Houle & Fils, Inc.'s Motion for Summary Judgment;

(2) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about September 7, 2011, on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment;

(3) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about April 1, 2010, on Plaintiffs' Motion to Reconsider the Court's Order on Summary Judgment entered on March 22, 2005 and the Court's Order on Summary Judgment entered on July 24, 2005;

(4) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about October 21, 2011, on

the district court's oral ruling on Defendant Standley Trenching, Inc.'s Motion for Summary Judgment..

(5) The entire reporter's standard transcript as defined in I.A.R. 25(a), in compressed format, of the hearing before the district court on or about December 20, 2011, on the district court's oral ruling on Counterclaimant Standley Trenching, Inc.'s Renewed Motion for Award of Prejudgment Interest, Defendant Standley Trenching, Inc.'s Motion for Attorney Fees and Costs and DeGroot's Objection to Attorney Fees and Costs.

6. The Appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

6.1 Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.2 Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about May 18, 2007;

6.3 Plaintiffs' Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.4 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment – filed June 5, 2007;

6.5 Defendant Houle's Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment – filed on or about June 11, 2007;

6.6 Plaintiffs' Memorandum in Opposition to Defendant Standley's Motion for Summary Judgment – filed February 15, 2005;

6.7 Affidavit of Kevin E. Dinius in Support of Memorandum in Opposition to Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Motion for Summary Judgment on Complaint and Counterclaim – filed February 15, 2005;

6.8 Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment – filed March 7, 2007;

6.9 Affidavit of Jill S. Holinka in Support of Memorandum in Opposition to Third Party Defendant's Motion for Summary Judgment – filed March 7, 2007;

6.10 Motion to Reconsider Order Granting Defendant's (Standley) Motion for Summary Judgment Entered on March 18, 2005 – filed April 27, 2007;

6.11 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 – filed April 27, 2007;

6.12 April 30, 2007 Order on Summary Judgment;

6.13 Order Determining Predominate Factor of Contract;

6.14 Third Party Defendant Standley Trenching, Inc. d/b/a Standley and Co.'s Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.15 Third Party Defendant Standley's Response to Plaintiffs' Motion to Reconsider Order Granting Defendant's [Standley] Motion for Summary Judgment entered on March 18, 2005 and Request for Rule 11 Sanctions;

6.16 Third-Party Defendant Standley Trenching, Inc. d/b/a Standley & Co.'s Supplement Motion to Reconsider Order Partially Denying Motion for Summary Judgment;

6.17 Memorandum and Response to Standley Trenching Inc.'s Motion in Limine;

6.18 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Objection and Response to Standley Trenching Inc.'s Motion in Limine;

6.19 Memorandum in Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.20 Affidavit of Kevin E. Dinius in Support of Plaintiffs' Opposition to Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.21 Reply Memorandum in Support of Defendant Houle's Motion for Summary Judgment in Case No. CV 01-7777;

6.22 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice;

6.23 Order of Dismissal of Claims Against Third-Party Defendant Houle & Fils, Inc. with Prejudice in Case No. CV 01-7777;

6.24 Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.25 Standley Trenching Inc.'s Motion in Limine;

6.26 Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.27 Plaintiff's Opposition to Defendant Standley Trenching Inc.'s Motion for Partial Summary Judgment;

6.28 Affidavit of Michael J. Hanby II in Support of Plaintiffs' Opposition to Defendant Standley Trenching, Inc.'s Motion for Partial Summary Judgment;

6.29 Plaintiffs' Objection to Defendant Standley Trenching, Inc.'s Motion in Limine;

6.30 Standley Trenching, Inc.'s Reply to Memorandum in Support of Motion for Partial Summary Judgment;

6.31 Standley Trenching, Inc.'s Reply Memorandum in Support of its Motion in Limine;

6.32 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Motion in Limine;

6.33 Standley Trenching, Inc.'s Notice of Amendment of its Prior Motion for Partial Summary Judgment to Complete Motion for Summary Judgment Against Beltman Construction, Inc.;

6.34 Plaintiffs' Supplemental Briefing in Opposition to Motion in Limine;

6.35 Affidavit of Michael Sasser in Support of Standley Trenching, Inc.'s Supplemental Memorandum Regarding its Motion for Summary Judgment and Motion in Limine;

6.36 Standley Trenching, Inc.'s Supplemental Memorandum in Support of its Motion for Summary Judgment and Motion in Limine;

6.37 Order Granting Standley Trenching, Inc.'s Complete Motion for Summary Judgment as to all Claims and Causes of Action stated in Beltman Construction, Inc.'s Third Party Complaint;

6.38 Counterclaimant's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim;

6.39 Affidavit of Robert D. Lewis in Support of Counterclaimant's Renewed Motion for Award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim;

6.40 Counterclaimant's Second Memorandum of Attorneys Fees;

6.41 Defendant/Third Party Defendant Standley Trenching, Inc.'s Motion for Costs and Attorney Fees;

6.42 Defendant/Third Party Defendant Standley Trenching, Inc.'s Memorandum of Costs and Attorney Fees;

6.43 Defendant Standley Trenching, Inc.'s Supplemental Memorandum of Costs and Attorney Fees;

6.44 Affidavit of M. Michael Sasser in Support of Standley Trenching, Inc.'s

Memorandum of Costs and Attorney Fees;

6.45 Affidavit of Michael Kelly in Support of Standley Trenching, Inc.'s Supplemental Memorandum of Costs and Attorney Fees;

6.46 Defendant/Third Party Defendant Standley Trenching Inc.'s Memorandum of Law in Support of Motion for Costs and Attorney Fees;

6.47 Objection to Standley Trenching Inc.'s Motion for Costs & Attorney Fees;

6.48 Standley Trenching Inc.'s Supplemental Memorandum Supporting an Award of Fees;

6.49 Objection to Defendant/Third Party Defendant/Counterclaimant Standley Trenching Inc.'s Renewed Motion for award of Prejudgment Interest and Entry of Amended Judgment on Counterclaim;

6.50 Defendant/Third Party Defendant Standley Trenching Inc.'s Reply Memorandum to Plaintiff's Objection to Motion for Costs and Attorney Fees;

6.51 Amended Judgment on Counterclaim (\$64,132.81);

6.52 Order on Costs and Attorney Fees (\$180,558.78);

6.53 Amended Judgment for Costs and Attorney Fees.

7. I certify:

7.1 That a copy of this notice of appeal has been served on the reporter;

7.2 That the clerk of the district court will be paid the estimated fee of preparation of the reporter's transcript within the time required by rule after notice to Appellants of the amount of the estimated fee;


7.3 That the estimated fee for preparation of the clerk's record will be paid within the time required by rule after notice to Appellants of the amount of estimated fee;

7.4 That the appellate filing fee has been paid; and

7.5 That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 23rd day of January, 2012.

DINIUS LAW

By: 
Kevin E. Dinius
Michael J. Hanby II
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

M. Michael Sasser
SASSER & INGLIS, PC
P.O. Box 5880
Boise, ID 83705

- US Mail
- Overnight Mail
- Hand Delivery
- Facsimile - No. 344-8479

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

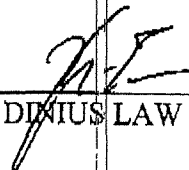
- US Mail
- Overnight Mail
- Hand Delivery
- Facsimile - No. 947-5910

Robert D. Lewis
CANTRILL, SULLIVAN & KING
P.O. Box 359
Boise, Idaho 83701-0359

- US Mail
- Overnight Mail
- Hand Delivery
- Facsimile - No. 345-7212

Laura Whiting
Court Reporter for the Honorable Gregory M. Culet
Canyon County Courthouse
1115 Albany St.
Caldwell, ID 83605

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


for DINIUS LAW

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

CHARLES JAY DE GROOT, etal.,)	
)	
Plaintiffs-counterdefendants-)	
Appellants,	)	Case No. CV-01-07777*C
)	
-vs-	)	CERTIFICATE OF EXHIBIT
)	
STANDLEY TRENCHING, INC., etal,)	
)	
Defendant-Counterclaimant-)	
Respondent,)	
And)	
)	
J. HOULE & FILS, INC.,)	
)	
Defendant-Respondent.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the following is being sent as an exhibit because it is very large:

Affidavit of Kevin E. Dinius in Support of Plaintiffs' Objection and Response to Standley Trenching Inc.'s Motion in Limine, filed 5-9-07

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 12 ^{July} day of ~~May~~, 2012.

CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

By: *J. Randall* Deputy


CERTIFICATE OF EXHIBIT

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

CHARLES JAY DE GROOT, etal.,)	
)	
Plaintiffs-Counterdefendants-)	
Appellants,)	
	)	Case No. CV-01-07777*C
-vs-)	
	)	CERTIFICATE OF CLERK
STANDLEY TRENCHING, INC., etal.,)	
)	
Defendant-Counterclaimant-)	
Respondent,)	
And)	
)	
J. HOULE & FILS, INC,)	
)	
Defendant-Respondent.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including documents requested.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 12 day of ^{July}~~May~~, 2012.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.
By:  Deputy

CERTIFICATE OF CLERK

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

CHARLES JAY DE GROOT, etal.,)	
)	
Plaintiffs-Counterdefendants-)	
Appellant,	)	Supreme Court No. 39406-2011
)	
-vs-	)	CERTIFICATE OF SERVICE
)	
STANDLEY TRENCHING, INC, etal.,)	
)	
Defendant-Counterclaimant-)	
Respondent,)	
And)	
)	
J. HOULE & FILS, INC.,)	
)	
Defendant-Respondent.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcript to the attorney of record to each party as follows:

Kevin E. Dinius and Michael J. Hanby II, DINUS LAW
 M. Michael Sasser, SASSER & INGLIS P.C.
 Robert D. Lewis, CANTRILL SKINNER SULLIVAN & KING, LLP

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 12 day of ^{July}~~May~~, 2012.

CHRIS YAMAMOTO, Clerk of the District
 Court of the Third Judicial
 District of the State of Idaho,
 in and for the County of Canyon.

By: *J. Randall* Deputy

CERTIFICATE OF SERVICE