

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M. STEPHENS,)
husband and wife; DONALD C. and WANDA)
LOSEKE, husband and wife; NEAL E. and)
BEVERLY E. KEMPER, husband and wife;)
BRADLEY E. and CINDY STEPHENS,)
husband and wife; BILL E. and JANICE)
SMITH, husband and wife; JAMES and ANNA)
McINTOSH, husband and wife; DELMER)
KEEHN; STANLEY A. CZARNIK; DANIEL S.)
and DORIAN KASPAR, husband and wife;)
and WENDELL and ARLETTA FRANCIS,)
husband and wife,)

Plaintiffs,)

vs.)

JAMES D. PILLEN, M & P LAND COMPANY,)
and BEAVER VALLEY PORK, a Nebraska)
general partnership; JAMES D. PILLEN,)
ROBERT L. GOTTSCH, BRETT GOTTSCH,)
and WOLBACH FOODS PARTNERSHIP, a)
Nebraska general partnership; JAMES D.)
PILLEN, JAMES HEMMER, DEBORAH)
RASBY, DAN O'CONNOR, and NORTHERN)
PLAINS PARTNERSHIP, a Nebraska general)
partnership; and JAMES D. PILLEN, DANIEL)
O'CONNOR, DEBORAH RASBY, and PST)
NORTHERN NANCE PARTNERSHIP, a)
Nebraska general Partnership,)

Defendants.)

Case No. 0100-69

PETITION and
PRAECIPE FOR SUMMONS

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

DEC 27 2000

LAVONNE M. SHERRILL

COME NOW the Plaintiffs Earl P. and Kathleen M. Stephens, Donald C. and Wanda Loseke, Neal E. and Beverly E. Kemper, Bradley E. and Cindy Stephens, Bill E. and Janice Smith, James and Anna McIntosh, Delmer H. Keehn, Stanley A. Czarnik, Daniel S. and Dorian Kaspar, and Wendell and Arletta Francis, by and through counsel, and for their cause of action against the Defendants state and allege as follows:

1. Plaintiffs Earl P. and Kathleen M. Stephens are husband and wife, of legal age, and residents of Boone County, Nebraska. Said Plaintiffs have maintained a home and farming operation on the Southeast $\frac{1}{4}$ of Section 20, Township 18 North, Range 5 West, in Boone County, Nebraska, for 50 years.

2. Plaintiffs Donald C. and Wanda Loseke are husband and wife, of legal age, and residents of Boone County, Nebraska. Said Plaintiffs have maintained their home and farming operation on the Northwest $\frac{1}{4}$, the Southwest $\frac{1}{4}$, the Southeast $\frac{1}{4}$, the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$, and the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, all in Section 8, Township 18 North, Range 5 West, Boone County, Nebraska, for more than 20 years.

3. Plaintiffs Neal C. and Beverly E. Kemper are husband and wife, of legal age, and residents of Boone County, Nebraska. Plaintiff Neal Kemper has lived and farmed on the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Township 18 North, Range 5 West, Boone County, Nebraska, all of his life (53 years). Plaintiff Beverly Kemper has lived and farmed with her husband on said real estate for more than 20 years.

4. Plaintiffs Bradley E. and Cindy Stephens are husband and wife, of legal age, and residents of Boone County, Nebraska. Plaintiff Bradley Stephens has lived and farmed on the Northeast $\frac{1}{4}$ of Section 20, Township 18 North, Range 5 West, Boone County, Nebraska, all of his life (39 years). Plaintiff Cindy Stephens has lived and farmed with her husband on said real estate for more than 10 years.

5. Plaintiffs Bill E. and Janice Smith are husband and wife, of legal age, and residents of Nance County, Nebraska. Said Plaintiffs have lived and farmed on the West $\frac{1}{2}$ of Section 28, Township 18 North, Range 5 West, Nance County, Nebraska, for 26 years.

6. Plaintiffs James and Anna McIntosh are husband and wife, of legal age, and residents of Boone County, Nebraska. Plaintiff James McIntosh has lived and farmed on Section 21, Townships 18 and 19 North, Range 5 West, Boone County, Nebraska, for 45 years. Plaintiff Anna McIntosh has lived and farmed with her husband on said real estate for 21 years.

7. Plaintiff Delmer Keehn is of legal age and a resident of Nance County, Nebraska. Said Plaintiff has lived and farmed on the Northwest $\frac{1}{4}$ of Section 35, Township 18 North, Range 5 West, Nance County, Nebraska, for 60 years.

8. Plaintiff Stanley A. Czarnik is of legal age and a resident of Nance County, Nebraska. Said Plaintiff has lived and farmed on the Southwest $\frac{1}{4}$ of Section 14, Township 18 North, Range 5 West, Nance County, Nebraska, for 32 years.

9. Plaintiffs Daniel S. and Dorian Kaspar are husband and wife, of legal age, and residents of Nance County, Nebraska. Said Plaintiffs have maintained their home and farming operation on part of the Northeast $\frac{1}{4}$ of Section 27, Township 18 North, Range 5 West, Nance County, Nebraska, for 19 years.

10. Plaintiffs Wendell and Arletta Francis are husband and wife, of legal age, and residents of Nance County, Nebraska. Said Plaintiffs have lived and farmed on the Northeast $\frac{1}{4}$ of Section 4, Township 17 North, Range 5 West, Nance County, Nebraska, for 35 years. Said real estate has been in Plaintiff Wendell Francis' family for 109 years.

11. Defendants James D. Pillen and M & P Land Company are general partners doing business as a Nebraska Partnership under the firm name of Beaver Valley Pork Partnership. Since 1997 the Defendants Pillen, M & P Land Company, and Beaver Valley Pork Partnership have owned and operated a swine production facility on the Southeast $\frac{1}{4}$ of Section 17, Township 18 North, Range 5 West, Boone County, Nebraska.

12. Defendants James D. Pillen, Robert L. Gottsch, and Brett A. Gottsch are general partners doing business as a Nebraska Partnership under the firm name of Wolbach Foods Partnership. Since 1998 the Defendants Pillen, R. Gottsch, B. Gottsch, and Wolbach Foods Partnership have owned and operated a swine production facility on the Northwest $\frac{1}{4}$ of Section 16, Township 18 North, Range 5 West, Boone County, Nebraska.

13. Defendants James D. Pillen, James Hemmer, Deborah Rasby, and Daniel O'Connor are general partners doing business as a Nebraska Partnership under the firm name of Northern Plains Partnership. Since 1997 the Defendants Pillen, Hemmer, Rasby, O'Connor, and Northern Plains Partnership have owned and operated a swine production facility on the South $\frac{1}{2}$ of Section 15, Township 18 North, Range 5 West, Nance County, Nebraska and on the North $\frac{1}{2}$ of Section 22, Township 18 North, Range 5 West, Nance County, Nebraska.

14. Defendants James D. Pillen, Deborah Rasby, and Daniel O'Connor are general partners doing business as a Nebraska Partnership under the firm name of PST Northern Nance Partnership. Since 1998 the Defendants Pillen, Rasby, O'Connor, and PST Northern Nance Partnership have owned and operated a swine production facility on the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 18 North, Range 5 West, Nance County, Nebraska.

15. The four facilities described in paragraphs 11 through 14 above were designed and constructed as integrated components of a single swine-production complex. Said facilities function collectively as a "reproduction center" for the swine-production complex, housing boars, gestating sows, sows with litters, and nursery pigs. The finish phase of the production cycle occurs at facilities located in Greeley County; said finish facilities are not a subject of this lawsuit.

16. Beginning in 1997 and continuing thereafter, the Defendants have operated the reproduction center of their integrated swine-production complex in such a manner as to constitute a nuisance to the Plaintiffs in one or more of the following particulars:

A. The confinement facilities release vapors, stench, and odors into the open air which are blown over the Plaintiffs' premises and into their homes. Such vapors, stench, and odors are vile, obnoxious, and nauseating and they continually annoy, harass, and disturb the Plaintiffs and their families, endanger their health, and render their property and homes uncomfortable and disagreeable.

B. The swine production complex utilizes anaerobic lagoons for storage of pig feces and urine flushed from the confinement facilities. The Defendants' lagoon management practices contribute to the vile, obnoxious, and nauseating odors emanating from the complex.

C. Until ordered to cease and desist by the Nebraska Department of Environmental Quality in April 2000, the Defendants' employees ground up the carcasses of dead pigs from the confinement facilities and placed the remains in the anaerobic lagoons, further contributing to the vile, obnoxious, and nauseating odors emanating from the complex and further endangering the health of the Plaintiffs and their families.

D. The swine production complex utilizes high-volume irrigation "guns" to spray the waste from the anaerobic lagoons (including the ground-up carcasses of dead pigs) into the air upon surrounding lands, thereby further contributing to the vile, obnoxious, and nauseating odors emanating from the complex and further endangering the health of the Plaintiffs and their families.

E. The Defendants have sprayed the waste from the anaerobic lagoons through the high-volume irrigation guns at a rate that exceeds the natural capacity of the land to absorb it, thereby causing polluted water to run off the Defendants' land into the ditches and nearby

streams, thereby further contributing to the vile, obnoxious, and nauseating odors emanating from the complex and further endangering the health of the Plaintiffs and their families.

F. The above-referenced management practices have caused an unprecedented and unreasonable number of flies and vermin to appear on the Plaintiffs' property.

17. As a proximate result of the foregoing activities by Defendants, Plaintiffs have been deprived of the normal use and enjoyment of their family homes and farming operations; they have suffered adverse health effects; they have been forced to spend time, labor, and money attempting to remove odors from their property and effects; their children have been deprived of normal outdoor childhood activities; and they have been required to keep their homes closed with the air conditioning or furnace running all year round. For the continuation of such injuries to the time of trial, each Plaintiff seeks general damages in an amount to be determined at trial.

18. Plaintiffs have notified the Defendants of the damage being caused by the swine-production complex, but Defendants refuse to abate the nuisance and threaten to continue it indefinitely.

19. Defendants' operation of the swine production complex constitutes a nuisance and has caused and continues to cause irreparable injury to the Plaintiffs, in that such operation is continuous and recurrent, and, unless enjoined, will result in a multiplicity of actions. Because no amount of monetary damages could compensate Plaintiffs for the permanent loss of enjoyment of their homes and their family farms and for the menace to their health occasioned by such operation, Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

- A. That Plaintiffs be awarded general damages in an amount to be determined at trial;
- B. That Defendants be restrained and enjoined from continuing operation of the swine production complex on the current premises or in any other place that would result in a nuisance to Plaintiffs;
- C. That Plaintiffs be awarded costs of this action; and
- D. That Plaintiffs be awarded such other and further relief as the Court deems proper.

REQUEST FOR JURY TRIAL

Plaintiffs hereby request a jury trial in this action.

EARL P. and KATHLEEN M. STEPHENS;
DONALD C. and WANDA LOSEKE; NEAL E.
and BEVERLY E. KEMPER; BRADLEY E. and
CINDY STEPHENS; WILLIAM E. and JANICE
SMITH; JAMES and ANNA McINTOSH;
DELMER KEEHN; STANLEY A. CZARNIK,
DANIEL and DORIAN KASPAR; and WENDELL
and ARLETTA FRANCIS, Plaintiffs

BY: Patricia A. Knapp
Patricia A. Knapp NSBA # 17718
1614 N. 31st Street
Lincoln, NE 68503
(402) 464-8537
(402) 464-8566 (fax)

PRAECIPE FOR SUMMONS

To the Clerk of the District Court of Boone County, Nebraska:

PLEASE ISSUE summons for service upon the Defendant JAMES D. PILLEN to be served by the Platte County Sheriff at the following address:

James D. Pillen
3214 - 25th Street
Columbus, NE 68601

PLEASE ISSUE summons for service by certified mail upon the following Defendants at the addresses listed below:

M & P Land Company
P.O. Box 609
Hastings, NE 68902

Beaver Valley Pork Partnership
3214 - 25th Street
Columbus, NE 68601

Northern Plains Partnership
3214 - 25th Street
Columbus, NE 68601

PST Northern Nance Partnership
3214 - 25th Street
Columbus, NE 68601

James Hemmer
208 E. Willard Avenue
Genoa, NE 68640

Deborah Rasby
24th & Singletree Streets
Columbus, NE 68601

Daniel O'Connor
3526 - 88th Street
Columbus, NE 68601

Wolbach Foods Partnership
3214 - 25th Street
Columbus, NE 68601

Brett A. Gottsch
1015 N. 204th Avenue
Elkhorn, NE 68022

Robert L. Gottsch
P.O. Box 1128
Hastings, NE 68902

PLEASE ISSUE the summons to be served by certified mail to Plaintiffs' attorney,
Patricia A. Knapp, 1614 N. 31st Street, Lincoln, NE 68503.

Patricia A. Knapp
Patricia A. Knapp, Attorney for Plaintiffs

Summons - District Court - Original

IN THE DISTRICT COURT OF BOONE COUNTY NEBRASKA

THE STATE OF NEBRASKA)
)
 COUNTY OF BOONE)

CASE NO CI00-69

EARL P. & KATHLEEN M. STEPHENS, husband & wife;
 DONALD C. & WANDA LOSEKE, husband & wife;
 NEAL E. & BEVERLY E. KEMPER, husband & wife;
 BRADLEY E. & CINDY STEPHENS, husband & wife;
 BILL E. & JANICE SMITH, husband & wife; JAMES &
 ANNA McINTOSH, husband & wife; DELMER KEEHN;
 STANLEY A. CZARNIK; DANIEL S. & DORIAN KASPAR,
 husband & wife; and WENDELL & ARLETTA FRANCIS,
 husband and wife,

PLAINTIFFS

VS.

JAMES D. PILLEN, M & P LAND CO., & BEAVER VALLEY
 PORK, a Nebraska General Partnership; JAMES D. PILLEN, ROBERT
 L. GOTTSCH, BRETT GOTTSCH, & WOLBACH FOODS PARTNERSHIP,
 a Nebraska General Partnership; JAMES D. PILLEN, JAMES HEMMER,
 DEBORAH RASBY, DAN O'CONNOR, & NORTHERN PLAINS PARTNERSHIP,
 a Nebraska General Partnership; & JAMES D. PILLEN, DANIEL O'CONNOR,
 DEBORAH RASBY, & PST NORTHERN NANCE PARTNERSHIP, a Nebraska
 General Partnership,

DEFENDANTS,

Notice to: **Beaver Valley Pork Partnership, 3214 - 25th St., Columbus, NE 68601**

YOU HAVE BEEN SUED.

You are hereby notified that in order to defend the lawsuit an appropriate WRITTEN RESPONSE must be filed with the Court within **THIRTY DAYS** after service of this Summons upon you, and that upon failure to do so the Court may enter **JUDGMENT** against you for relief demanded in the PETITION . A copy of the Petition is served this with summons.

Dated this 27TH day of DECEMBER, 2000.

Louanne M. Sherrill
 CLERK OF THE DISTRICT COURT
 Boone County Court House, Albion, NE 68620

PLAINTIFF'S ATTORNEYS: Patricia A. Knapp, 1614 N. 31st St., Lincoln, NE 68503
 (402) 464-8537

TYPE OF SERVICE / / PERSONAL / / RESIDENCE / **XX** / CERTIFIED MAIL



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IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M.)	Case No. CI00-69
STEPHENS, et al.,)	
)	
Plaintiffs,	)	REPORTER'S AFFIDAVIT
	)	OF WITNESS' REFUSAL
vs.	)	TO SIGN DEPOSITION
)	
JAMES D. PILLEN, et al.,)	
)	
Defendants.)	

I, Linda P. Swanson, RMR, do hereby certify that I took the deposition of DEAN SETTJE on October 2, 2001, in the above-captioned case;

That after writing a letter to defendant's attorney, Ms. Nora Kane, and allowing 30 days for such reading and signing, the witness has refused to do the same;

THEREFORE, said deposition has been delivered pursuant to Supreme Court Rules.

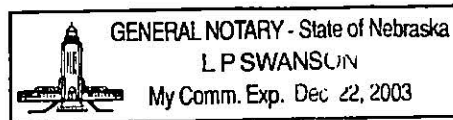
Dated this 30th day of Nov. 2001.

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

DEC 04 2001

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

L P Swanson
GENERAL NOTARY PUBLIC
State of Nebraska



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October 19, 2001

Ms. Nora A. Kane
Attorney at Law
DOMINA LAW FIRM
1065 N. 115th Street
Omaha, NE 68514

In re: Stephens v. Pillen

Dear Ms. Kane:

Enclosed herewith please find certified copies of the depositions of Jim Pillen, Ed Parks, and Dean Settje, together with the original Amendment to Deposition pages.

Please have the deponents read over their depositions, noting any changes or corrections on the Amendment to Deposition pages and signing same before a General Notary Public. Then please return the Amendment to Deposition pages to me for inclusion in the original depositions.

If I do not receive said page by November 25, 2001, the deponents' signatures will be deemed waived.

Thank you for your cooperation.

Sincerely,



Linda P. Swanson, RMR

Enclosures
cc: Ms. Patricia Knapp

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife;
Donald C. and Wanda Loseke,
Husband and Wife;
Neal E. and Beverly E. Kemper,
Husband and Wife;
Bradley E. and Cindy Stephens,
Husband and Wife;
Bill E. and Janice Smith,
Husband and Wife;
James and Anna McIntosh,
Husband and Wife;
Delmer Keehn;
Stanley A. Czarnik;
Daniel S. and Dorian Kaspar,
Husband and Wife; and
Wendell and Arletta Francis,
Husband and Wife,

Plaintiffs,

v.

James D. Pillen,
M & P Land Co., and
Beaver Valley Pork,
a Nebraska General Partnership;
James D. Pillen,
Robert L. Gottsch,
Brett Gottsch, and
Wolbach Foods Partnership,
a Nebraska General Partnership;
James D. Pillen,
James Hemmer,
Deborah Rasby,
Dan O'Connor, and
Northern Plains Partnership,
a Nebraska General Partnership;
James D. Pillen,
Daniel O'Connor,
Deborah Rasby, and
PST Northern Nance Partnership,
a Nebraska General Partnership,

Defendants.

Case No. C100-69

Defendants' Motion in Limine

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 08 2009

LAVONNE M. SHERRILL, CLERK
BY *David L. Kirsch*, DEPUTY

1. Pursuant to Nebraska Discovery Rules 26, 33, 34, and 37, Defendants respectfully ask the Court to limit Plaintiffs' evidence at trial for their failure to answer, object, or otherwise respond to Interrogatories and Requests for Production of Documents properly and timely served upon Plaintiffs' counsel.
2. Plaintiffs should not be allowed to produce any witnesses other than the 18 named Plaintiffs, as they are the only witnesses whose identity or testimony was ever disclosed by Plaintiffs.
3. Plaintiffs should not be allowed to produce any documentary evidence other than the 2 (two) calendars produced with correspondence dated December 27, 2001, as those are the only pieces of evidence ever disclosed by Plaintiffs.
4. Defendants' Brief and Evidence in support of this Motion are attached.

January Σ, 2002.

James D. Pillen, M & P Land Co., and Beaver Valley Pork, a Nebraska General Partnership; James D. Pillen, Robert L. Gottsch, Brett Gottsch, and Wolbach Foods Partnership, a Nebraska General Partnership; James D. Pillen, James Hemmer, Deborah Rasby, Dan O'Connor, and Northern Plains Partnership, a Nebraska General Partnership; James D. Pillen, Daniel O'Connor, Deborah Rasby, and PST Northern Nance Partnership, a Nebraska General Partnership, Defendants,

By 

David A. Domina, #11043
Nora M. Kane, #21562
Domina Law pc
1065 N. 115th St., Ste. 150
Omaha, NE 68154-4423
(402) 493-4100

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M. STEPHENS,)
et al.,)

Case No. CI00-69

JAN 08 2002

Plaintiffs,)

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

vs.)

MOTION IN LIMINE

JAMES D. PILLEN, et al.,)

Defendants.)

Plaintiffs hereby move this Court to enter an Order limiting the testimony and evidence to be offered at trial by the Defendants by precluding any questions or references concerning the following:

- A. Any economic impact the hog confinement facilities at issue may have on the Boone County area;
- B. Any records, numbers, figures, or other testimony or evidence relating to the numbers of persons employed by the Defendants;
- C. Any purchases or expenditures by the Defendants or their employees including, but not limited to, expenditures for feed, materials, equipment, payroll, or any other goods or services in the Boone County area;
- D. Any contributions, gifts, or other charitable activities by the Defendants, their employees, and/or their agents;
- E. Any testimony or evidence intended or reasonably calculated to show that the gravity or seriousness of the damage to the Plaintiffs is outweighed by the utility, usefulness, or beneficial nature of the Defendants' hog operation;
- F. Any testimony or evidence intended or reasonably calculated to show the social or economic value attached to the Defendants' hog operations or hog production in general;
- G. Any testimony or evidence intended or reasonably calculated to show the impracticality, difficulty, or expense required to prevent or avoid the odor caused by the Defendants' hog operation;

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H. Any testimony or evidence intended or reasonably calculated to show the income or net worth of the Plaintiffs; and

I. Any testimony or evidence intended or reasonably calculated to show the Defendants did not intend to produce offensive odors or become a nuisance

for the reasons that such evidence is not relevant, is unfairly prejudicial, would create confusion of the issues, would mislead the jury, and is not related to the issues fairly raised in the pleadings filed in this matter. Defendants' pleadings, exhibit list, and witness list indicate an intention to present such evidence and to have expert and lay witnesses testify on the above points during the trial of the case at bar.

EARL P. and KATHLEEN M. STEPHENS, et al.,
Plaintiffs

BY: Pat Knapp
Patricia A. Knapp NSBA # 17718
1614 N. 31st Street
Lincoln, NE 68503
(402) 464-8537
Fax (402) 464-8566

and

Shelley A. Horak NSBA #19453
1306 Pierce Street
Sioux City, IA 51105
(712) 258-1475
Fax (712) 258-1477

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion in Limine was hand-delivered on the 8th day of January, 2002, to Defendants' counsel David A. Domina, Esq., 1065 N. 115th Street, Suite 150, Omaha, NE 68154-4423.

Pat Knapp
Patricia A. Knapp, Attorney for Plaintiffs

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. AND KATHLEEN M.
STEPHENS, husband and wife, et al.,

: CASE NO. C100-69

Plaintiffs,

: PLAINTIFFS' EXHIBIT AND
: WITNESS LIST

vs.

JAMES D. DILLEN, M & P LAND CO.,
Et al.,

Defendants.

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 08 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

WITNESSES:

The following witnesses will testify as to the smell coming from Defendants facilities and the impact of that smell on their lives:

Earl P Stephens
Kathleen M. Stephens
Donald C. Loseke
Wanda Loseke
Neal E Kemper
Beverly E. Kemper
Bradley F Stephens
Cindy Stephens
Bill E Smith
Janice Smith
James McIntosh
Anna McIntosh
Delmer Keehn
Stanley A. Czarnik
Daniel S. Kaspar
Dorian Kaspar
Wendell Francis
Arletta Francis
Francis Whidden, Rural Route, St Edward, Nebraska
From United States Postal Service: Laura Galitz
Dee Koenig (Milk truck driver) (Address unknown)
Lee Kemper, St Edward Nebraska
Stan Stultz, City Commissioner, St Edwards, Nebraska

The following witnesses will testify as to the operations and management of the Defendant's facility:

James D. Pillen
Robert L. Gottsch

Brett Gottsch
James Hemmer
Deborah Rasby
Dan O'Connor
Employees of Defendant:
Doug Kirkman
Ed Parks
Andy Jakobowski
Tim Leader
Andy Borer
Roger Leuttel
Jay Rutten
Tom Splelts
Brett Bonwell
Clete Pillen
Dr. Les Griess
Dr. Tom Petiznik
Dr. Cory Faust
Dr. Jeff Luebbe
Judy Sterns

From National By-Products: Sales Manager or Driver
P O Box 615
Des Moines IA 50303

Thomas Maul, Attorney at Law, 2468 18th Avenue, PO Box 145, Columbus, Nebraska.

The following witnesses will testify as to the regulatory the environmental regulatory record of the Defendants' facilities and their contact with Defendants and Defendants employees concerning the regulatory compliance of the facilities.

From the Nebraska Department of Environmental Quality, Suite 400, The Atrium 1220 N Street, Lincoln NE 68509:

Dennis Heitmann
Patrick Rice
Keith Sandall
Gary Buttermore
Alan Rosenboom
Renee Hancock
Jerry Vandersnick

The following witnesses will testify concerning facility design, maintenance and management practices:

From Heartland Builders: Henry Zach

From Geo-technical materials Engineering and Environmental, Grand Island: David Peterson

From Settje Agri-Services and Engineering, 4700 West Rock Creek Road, Raymond NE 68428: Dean Settje and Dale Leffers

From Iowa State: Dr. Dwaine Bundy (Took air quality samples)

Subject to the court's ruling on Plaintiffs' motion in limine concerning economic benefit to the community the following witness may be called to testify regarding the economic benefit of large hog confinement facilities to small rural communities

William Weidea, Department of Economics, The Colorado College, 14 E Cache La Poudre, Colorado Springs CO 80903 719-389-6407

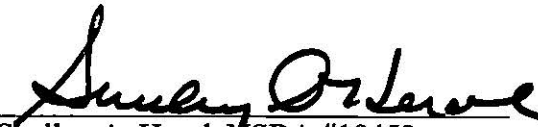
Dr. John Ikerd, Professor Emeritus of Agricultural Economics, University of Missouri-Columbia, 5121 S Brock Rodgers Road, Columbia MO 65201 573-874-0408

Stan Stultz, City Commissioner St Edwards

All witnesses listed by the Defendant

EXHIBITS:

1. Project Description Mt. Echo (Deposition Exhibit 1)
2. Project Description - (Deposition Exhibit 2)
3. Project Description - (Deposition Exhibit 3)
4. Project Description - (Deposition Exhibit 4)
5. Facility Breeding and Gestation, Production, Reports (Deposition Exhibit 5)
6. Facility Rendering Records (Deposition Exhibit 6)
7. Title 130 Rules and Regulations Pertaining to Livestock Waste Control, effective _____
8. Title 130 Rules and Regulations Pertaining to Livestock Waste Control, effective February 28, 2000
9. Photo of dead hogs on side of road
10. Photo of dead hogs on side of road
11. Photo of dead hogs on side of road
12. NDEQ file re: Mt. Echo Reproduction Facility
13. NDEQ file re: Northern Nance Reproduction Facility
14. NDEQ file re: Beaver Valley Pork Reproduction Facility
15. NDEQ file re: Northern Plains Reproduction Facility
16. Kemper calendar 2000
17. Kemper calendar 1999
18. Kemper calendar 1998
19. Stephens calendar 2001
20. Stephens calendar 2000
21. Stephens calendar 1999
22. Stephens calendar 1998
23. Stephens calendar 1997
24. Map of local area showing plaintiffs' homes and defendants facilities
25. All exhibits listed by the Defendants



Shelley A. Horak NSBA #19453
1306 Pierce Street
Sioux City, IA 51105
Ph. (712) 258-1475
Fax (712) 258-1477

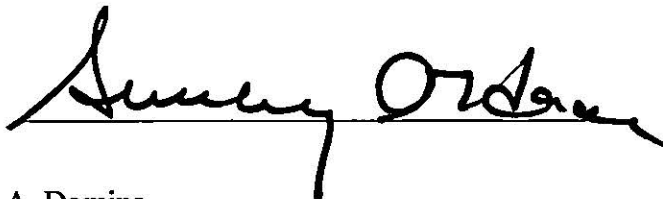


Patricia A. Knapp NSBA #17718
Attorney at Law
1614 N. 31st Street
Lincoln, NE 68503
Ph (402) 464-8537
Fax 402-464-8566

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the document attached to this Certificate was hand delivered to the persons listed 8th day of January, 2002



David A. Domina
Attorney at Law
1065 N. 115th Street, Suite 150
Omaha, NE 68154-4423

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife,
et al.

Plaintiffs,

v.

James D. Pillen,
et al.

Defendants.

Case No. C100-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 08 2001

LAVONNE M. SHERRILL, CLERK
BY *Eva L. Kiesel*, DEPUTY

Defendants' Pretrial
Conference Submission

1. Defendants James D. Pillen, *et al.* respectfully submit the following pretrial conference submissions.

I. Uncontroverted Facts

2. Plaintiffs Earl and Kathleen Stephens are husband and wife, Boone County residents who currently have a home and farming operation in Boone County.

3. Plaintiffs Donald C. and Wanda Loseke are husband and wife and maintain a part-time home and part-time farming operation in Boone County.

4. Plaintiffs Neil C. and Beverly Kemper are husband and wife and maintain a home and farming operation in Boone County.

5. Plaintiffs Bradley and Cindy Stephens are husband and wife and maintain a home and farming operation in Boone County.

6. Plaintiffs Bill and Janice Smith are husband and wife and maintain a home and farming operation in Nance County.

7. Plaintiffs James and Anna McIntosh are husband and wife and maintain a home and farming operation in Boone County.

8. Plaintiff Delmer Keehn maintains a home and farming operation in Nance County.

9. Plaintiff Stanley A. Czarnik maintains a home and farming operation in Nance County.

10. Plaintiffs Daniel S. and Dorian Casper are husband and wife and maintain a home in Nance County.

11. Plaintiffs Wendell and Arletta Francis are husband and wife and maintain a home and farming operation in Nance County.

12. Inman Foods, a general partnership of James D. Pillen and Morrison Enterprises d/b/a Beaver Valley Pork owns and operates a swine production facility of the Southeast Quarter (SE ¼) of Section 17, Township 18 North, Range 5 West, Boone County, Nebraska.

13. Wolbach Foods, a general partnership of James D. Pillen, Robert L. Gottsch and Brett A. Gottsch owns and operates a swine production facility on the Northwest Quarter (NW ¼) of Section 16, Township 18 North, Range 5 West, Boone County, Nebraska.

14. James D. Pillen, James Hemmer, Debra Rasby and Daniel O'Connor are general partners doing business under the firm name Northern Plains Partnership, and own and operate a swine production facility on the South Half (S ½) of Section 15, Township 18 North, Range 5 West, Nance County, Nebraska and on the North Half (N ½) of Section 22, Township 18 North, Range 5 West, Nance County, Nebraska.

15. James D. Pillen, Debra Rasby and Daniel O'Connor are general partners doing business under the firm name of PST Northern Nance Partnership which has, since 1998, owned and operated a swine production facility on the East Half (E ½) of the Northwest Quarter (NW ¼) and the West Half (W ½) of the Northeast Quarter (NE ¼) of Section 33, Township 18 North, Range 5 West, Nance County, Nebraska.

16. Each of the aforementioned facilities are independent functioning and independently operated swine reproduction centers, housing gestating sows and sows with litters.

17. Some of the Plaintiffs harbor livestock on their farm or residential premises.

18. The swine operations and activities of Defendants are, in all respects, compliant with rules, regulations and requirements of each, any and all governmental and regulatory agencies and authorities with administrative oversight authority.

19. All four swine facilities are engaged in farrowing sows and selling 150-ween pigs at approximately 14 days of age and 10-12 pounds weight per head.

20. Boone and Nance Counties in Nebraska are counties with predominantly agricultural economics.

21. Swine production has occurred throughout rural Boone and Nancy Counties in Nebraska for more than 80 consecutive years.

22. United States Census Bureau data gathered during the 2000 census discloses these facts about Boone County, Nebraska:

- | | | |
|----|-------------------------------|---------------|
| a. | 2000 population | 6,259 |
| b. | Percent change since 1990 | 6.1% |
| c. | High School graduates | 3,323 |
| d. | College graduates | 410 |
| e. | Median household money income | \$31,324 |
| f. | Persons below poverty (%) | 12.0% |
| g. | Children below poverty (%) | 14.8% |
| h. | Land area | 687 sq. miles |
| i. | Persons per square mile | 9.1 |
| j. | Retail sales | \$60,501,000 |
| k. | Federal Funds and Grants | \$46,661,000 |

23. The United States Census Bureau: 1997 Economic Census discloses, about Boone County, Nebraska, this data concerning employment:

<u>Vocation</u>	<u>Number of Persons</u>	<u>Annual Payroll</u>	<u>Average Payroll</u>
Construction	53	\$1,094,000.00	\$20,642.00
Ford Manufacturing	68	2,031,000.00	29,868.00
Wholesale Trade	233	4,933,000.00	21,172.00
Retail Trade	298	4,208,000.00	14,120.00
Finance & Insurance	74	2,212,000.00	29,892.00
Professional	23	402,000.00	17,478.00

24. Plaintiffs have disclosed, and will call, no expert witnesses at trial.

25. Defendants' expert witnesses have been identified as:

James D. Pillen, DVM
Tom Petznick, DVM
Les Greiss, DVM
Corey Faust, DVM
Betsy Newton, Ph.D.
Mr. Al Larson
Dale Kavan
Brett Bonwell

26. The following exhibits may be offered or received — without foundation — any objections at trial:

a. No objections:

Plaintiffs' Exhibits:

Defendants' Exhibits:

b. No foundational objections:

Plaintiffs' Exhibits:

Defendants' Exhibits:

27. Although written discovery was propounded upon the Plaintiffs in July, 2001, Plaintiffs did not respond.

II. Controverted Facts and Issues

28. Does "Beaver Valley Pork" conduct activities that constitute a nuisance?

29. Does "Wolbach Foods Partnership" conduct activities that constitute a nuisance?

30. Does "North Plains Partnership" conduct activities that constitute a nuisance?

31. Does "PST Northern Nance Partnership" conduct activities that constitute a nuisance?

32. Do Beaver Valley Pork Partnership, Wolbach Foods Partnership, Northern Plains Partnership and PST Northern Nance Partnership constitute, collectively, a "reproduction center" or a "swine-production complex," or are the entities separate and distinct operations?

33. Must Plaintiffs prove that each Defendant operation constitutes a nuisance?

34. Are individual Defendants improperly joined?

35. Are viable claims stated against any or all these individual Defendants:

- a. James D. Pillen
- b. Robert L. Gottsch
- c. Brett Gottsch
- d. James Hemmer
- e. Deborah Rasby
- f. Daniel O'Connor

36. Do the operations of any Defendants, as a result of the manner in which their facilities operate, release vapors, stenches or odors into the open air that constitute a nuisance?

37. Do the operations of the lagoons of any of the Defendants emit odors that constitute a nuisance?

38. Did the grinding of carcasses of dead pigs constitute a nuisance by causing nuisance-level odors?

39. Are high volume irrigation "guns" used in such a way as to cause nuisance-level odors?

40. Has polluted water run off to any location so as to cause a nuisance?

41. Do unreasonable flies or vermin emanate from any operation of any Defendant and constitute a nuisance?

42. Has any Plaintiff been deprived of the normal use or enjoyment of his or her home or farming operation?

43. Has any Plaintiff suffered any adverse health effect because of the Defendants' activities for which a remedy may be awarded?

44. Has any Plaintiff suffered any damage, injury or harm as a result of any condition that would be offensive to a person of ordinary sensitivities for which a remedy may be awarded?

45. Have Defendants, or any of them, caused, or do they threaten to cause, irreparable injury to plaintiffs, or have they acted intentionally or unreasonably in the conduct of any of the swine facilities at issue?

46. Should an injunction be issued?

47. Since Plaintiffs have alleged that "no amount of monetary damage could compensate Plaintiffs" [*Petition* ¶ 19], may damages be awarded? May damages otherwise be awarded?

48. Should the motion of Defendants for inspection of premises filed June 6, 2001 be sustained, and should the Court inspect and view the premises?

49. Do the operations and activities of each Defendant comply in all respects with rules, regulations and requirements of each, any and all governmental and regulatory agencies and authorities?

50. Are the operations and activities of Defendants either (a) intentional and wrongful under nuisance law, or (b) reasonable and wrongful under nuisance law, in each, any and all respects?

51. Has any act or omission of any Defendant proximately caused any injury to any Plaintiff? If so, what injury has been proximately caused?

52. Have Plaintiffs done, completed and performed complete equity so they are entitled to equitable relief? Are Plaintiffs estopped by their own actions, conduct or inaction to assert claims for injunctive relief? Have Plaintiffs waived their right to injunctive relief?

53. Do the benefits and advantages of the operations conducted by any or all Defendants to the community at large outweigh any disadvantages that befall any individual Plaintiff?

54. Do any of the Plaintiffs have heightened sensitivities?
55. Have Defendants, and each of them, at all times conducted their operations with:
- a. Due care?
 - b. Reasonable, due and appropriate diligence?
 - c. In accordance with generally prevailing procedures, practices and circumstances utilized in their industry?
 - d. In such a manner as to provide employment, generate and produce products for ultimate human use and consumption as food, provide nutrients for crops and produce economic benefits that substantially outweigh any disadvantages of their operations or activities?
56. Must Plaintiffs prove the availability of application or a science or skill that could so alter the Defendants operations so as to remediate the circumstances about which they complain?
57. Have Defendants committed any intentional invasion of the rights or interests of any Plaintiff?
58. Are Defendants' swine operations and facilities public? Are they a public nuisance?
59. Have Plaintiffs pled, or may they prove, any special damages?
60. Should a declaratory judgment be entered declaring the operations of Defendants, and each of them, to be lawful, proper and reasonable?
61. Should a declaratory judgment be entered declaring that Defendants' operations, and each of them, comply with the *Nebraska Erosion & Sediment Control Act*, *Neb Rev Stat § 2-4602, et seq.*?
62. Do Plaintiffs' claims infringe or threaten to infringe upon powers delegated to government pursuant to *Neb Rev Stat § 71-298*?

63.

III. Defendants' Witnesses

Jim Pillen, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Deborah Rasby
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Brett Gottsch
1015 N. 204th Ave.
Elkhorn, NE 68022-4604
402-289-4421

Dan O'Connor
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Bob Gottsch
1015 N. 204th Ave.
Elkhorn, NE 68022-4604
402-289-4421

James Hemmer
RR 1, Box 519
Genoa, NE 68640
402-993-2447

Earl Stephens
RR 2, Box 163
St. Edward, NE 68660
402-678-2720

Kathleen Stephens
RR 2, Box 163
St. Edward, NE 68660
402-678-2720

Brad Stephens
RR 2
St. Edward, NE 68660
402-678-3421

Cindy Stephens
RR 2
St. Edward, NE 68660
402-678-3421

Neal Kemper
RR 2, Box 168
St. Edward, NE 68660
402-678-3350

Beverly Kemper
RR 2, Box 168
St. Edward, NE 68660
402-678-3350

James McIntosh
RR 2, Box 136
St. Edward, NE 68660
402-678-2674

Anna McIntosh
RR 2, Box 136
St. Edward, NE 68660
402-678-2674

Bill Smith
RR 2
St. Edward, NE 68660
402-678-3317

Janice Smith
RR 2
St. Edward, NE 68660
402-678-3317

Delmar Keehn
RR 1
St. Edward, NE 68660
402-678-2806

Stan Czarnik
RR 1, Box 55
St. Edward, NE 68660
402-678-2506

Dan Kaspar
RR 2, Box 56A
St. Edward, NE 68660
402-678-2536

Dorian Kaspar
RR 2, Box 56A
St. Edward, NE 68660
402-678-2536

Wendell Francis
RR 2, Box 159
St. Edward, NE 68660
402-678-2889

Arletta Francis
RR 2, Box 159
St. Edward, NE 68660
402-678-2889

Keith Hoshor
RR 2, Box 174
St. Edward, NE 68660
402-678-3437

Gary Choate
BV 82 Co.
St. Edward, NE 68660

Aaron Neiman
RR 2, Box 653
St. Edward, NE 68660
402-678-2434

Mr. Mike Laska
RR 2, Box 158
St. Edward, NE 68660
402-678-2581

D. Fern Smith
Route 1, Box 52
St. Edward, NE 68660

Mr. Tom Smith
Route 1, Box 253
St. Edward, NE 68660
402-678-2704

LeRoy Neimann
RFD 2
St. Edward, NE 68660
402-678-3316

Sandra Neimann
RFD 2
St. Edward, NE 68660
402-678-3316

Dean Settje
Settje Agri-Services & Engineering
4700 W. Rock Creek Rd.
Raymond, NE 68428
402-783-2100

Dale Leffers, P.E.
Settje Agri-Services & Engineering
4700 W. Rock Creek Rd.
Raymond, NE 68428
402-783-2100

Betsy Newton, Ph.D.
Akey, Inc.
6531 St. Rt. 503 C.S. 5002
Lewisburg, OH 45338
937-962-2661

Dale Kavan
Akey, Inc.
6531 St. Rt. 503 C.S. 5002
Lewisburg, OH 45338
937-962-2661

Tom Petznick, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Brett Bonwell
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Les Griess, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Cory Faust, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Larry Lading, President
DPI Distribution, Inc.
17656 Avenue 168
Porterville, CA 93257
800-654-3693

Rick Koelsch
University of Nebraska - Omaha
60th & Dodge Street
Omaha, NE 68106
402-472-4051

Owen Nelson
Hastings Pork
605 S. Heartland Ave.
Hastings, NE 68901
402-463-551
402-463-552

Dennis Heitman
Nebraska DEQ
The Atrium
1200 N Street, Ste. 400
Lincoln, NE 68509-8922
402-471-2033

Greg Gilsdorf
RR 1, Box 83
Atkinson, NE 68713
402-925-2150

Dr. Jack Campbell
2015 Beverly Blvd.
North Platte, NE 69101

Jackie Brownlee
1067 Greeley Ave.
Wolbach, NE 68882
308-246-5265

Bernie Yax
1319 7th Street
St. Paul, NE 68873
308-754-5101

Ken Olmquist
NPPD
Columbus, NE

Jay Rutten
PST Environmental Assurance
Coordinator
3214 25th Street
Columbus, NE 68601

John Bellar
Columbus NE (Exterminator)

Jack Sukavaty
Lincoln NE (DEQ/Environmental)

IV. Defendants' Expert Witnesses

James D. Pillen, DVM
Tom Petznick, DVM
Les Greiss, DVM
Corey Faust, DVM
Betsy Newton, Ph.D.
Mr. Al Larson
Dale Kavan
Brett Bonwell

Dean Settje
John Bellar
Jack Sukavoty
Dale Leffers PE
Jack Campbell PhD

V. Exhibits

^{2/}
~~6/~~ See attached list.

January 8, 2002.

James D. Pillen, M & P Land Co., Partnership; et al., Defendants,

By



David A. Domina, #11043
Nora M. Kane, #21562
Domina Law pc
1065 N. 115th St., Ste. 150
Omaha, NE 68154-4423
(402) 493-4100

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Defendants' Pretrial Conference Submission was hand delivered at Pretrial Conference on January 8th, 2002, along with Defendants' Trial Brief.

Patricia Knapp, Esq.
1614 N. 31st St.
Lincoln, NE 68503

Shelley Horak
600 Fourth St., #905
Sioux City, IA 51101



David A Domina #11043

January 4, 2002
601109 / cjt
24703

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

**Earl P. and Kathleen M. Stephens,
Husband and Wife; et al.,**

Case No. C100-69

Plaintiffs,

v.

James D. Pillen, et al.,

Defendants.

Defendants' Exhibit List

PL	DF	Description	OFF'D	OBJ	RCV'D	NOT RCV'D	DATE
		US Census Bureau State and County QuickFacts – Boone County Nebraska					
		USA Counties Profile – Boone County Nebraska					
		1999 County Business Patterns for Boone County Nebraska – US Census Bureau					
		1997 Economic Census: Summary Statistics for Boone County, NE					
		1997 Census of Agriculture County Profile – Boone Nebraska					
		Boone and Nance County Economic Benefit Analysis					
		Chart - Economic Impact - Boone County					
		Chart - Defendants' Demographics of Personnel					

		Chart - Plats					
		Chart - Location of Plaintiffs from Locations of Defendants					
		Copy of plat map of the land around the swine production complexes – w/ handwritten notes					
		Nebraska Wind Summaries for Odor Management Planning and CD containing weather					
		Plaintiffs' calendars (2)					
		Comparison graph of actual wind data and plaintiffs' handwritten notes					
		Wind Rose - 1998 (with underlying data)					
		Wind Rose - 1999 (with underlying data)					
		Wind Rose- 2000 (with underlying data)					
		Wind Rose - 2001 (with underlying data)					
		Community Banks by County – Results for Boone County					
		County Population Estimates for July 1, 1999					
		County Estimates for Medial Household Income for Nebraska: 1993					
		Profile of Selected Social Characteristics: 2000 – Geographic Area: Nebraska					
		Profile of General Demographic Characteristics: 2000 Geographic Area: Nebraska					
		NebFacts publication – Livestock Waste Management Act – Revised March 2000					

		Odor testing data and analysis from two university studies conducted in field environments using ALD/Pit					
		2001 Nebraska Swine Report					
		DEQ Permits - all facilities					
		DEQ file for Mt. Echo					
		DEQ file for Northern Plains					
		DEQ file for Beaver Valley Reproduction Center					
		DEQ file for Northern Nance County Facility					
		Feb. 23, 2001 letter from DEQ notifying that the Construction Permit for PST Northern Nance County was issued on February 20, 2001					
		Manure Characteristics – Manure Management Systems Series					
		05/09/01 Beaver Valley Pork Scoring Sheet					
		Animal Science Products, Inc. – information about MicroAid					
		Current Employees List					
		Terminated Employees List					
		Video Tape – The Impact of Nebraska’s Swine Industry on Rural Economics – Dr. Mike Brumm					
		Newspaper Article from the St. Edward Advance, Thursday February 8, 2001 – An Environmental Steward Award is Presented to PST					
		Boone County, Nebraska Zoning Regulations – 1999					
		Nance County, Nebraska Zoning Regulations –					

		January 15, 2001 Feedstuffs article – Hog Industry Insider					
		01/01/00 Partnership Agreement of Inland Foods Partnership					
		October 21, 1998 Cover letter from National Producers Council with Odor/Environmental Assessment Report conducted October 7, 1998 for Beaver Valley Farms					
		October 21, 1998 cover letter from National Pork Producers Council with Odor/Environmental Assessment Report conducted October 6, 1998 for Northern Plains					
		Handwritten notes re: swine facilities					
		Heartland Builder Co. site plans for Beaver Valley facility (3 sets)					
		Heartland Builder Co. site plans for Northern Nance complex (3 sets)					
		Videotape: PST Progressive Swine Technologies; “Changing for the Future”					
		Chart - Summary of Odor Complaints					
		Excerpts - Deposition Admissions of Earl P.					
		Excerpts - Deposition Admissions of Kathleen M. Stephens					

		Excerpts - Deposition Admissions of Donald C. Loseke					
		Excerpts - Deposition Admissions of Wanda Loseke					
		Excerpts - Deposition Admissions of Neal E.					
		Excerpts - Deposition Admissions of Beverly E. Kemper					
		Excerpts - Deposition Admissions of Bradley E. Stephens					
		Excerpts - Deposition Admissions of Cindy Stephens					
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		Excerpts - Deposition Admissions of Janice Smith					
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		Excerpts - Deposition Admissions of Anna McIntosh					
		Excerpts - Deposition Admissions of Delmer Keehn					
		Excerpts - Deposition Admissions of Stanley A. Czarnik					
		Excerpts - Deposition Admissions of Daniel S.					
		Excerpts - Deposition Admissions of Dorian Kaspar					
		Excerpts - Deposition Admissions of Wendell					
		Excerpts - Deposition Admissions of Arletta Francis					
		PST - Dietary information					
		PST - Lagoon Complying Information					

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DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife;
Donald C. and Wanda Loseke,
Husband and Wife;
Neal E. and Beverly E. Kemper,
Husband and Wife;
Bradley E. and Cindy Stephens,
Husband and Wife;
Bill E. and Janice Smith,
Husband and Wife;
James and Anna McIntosh,
Husband and Wife;
Delmer Keehn;
Stanley A. Czarnik;
Daniel S. and Dorian Kaspar,
Husband and Wife; and
Wendell and Arletta Francis,
Husband and Wife,

Plaintiffs,

v.

James D. Pillen,
M & P Land Co., and
Beaver Valley Pork,
a Nebraska General Partnership;
James D. Pillen,
Robert L. Gottsch,
Brett Gottsch, and
Wolbach Foods Partnership,
a Nebraska General Partnership;
James D. Pillen,
James Hemmer,
Deborah Rasby,
Dan O'Connor, and
Northern Plains Partnership,
a Nebraska General Partnership;
James D. Pillen,
Daniel O'Connor,
Deborah Rasby, and
PST Northern Nance Partnership,
a Nebraska General Partnership,

Defendants.

Case No. C100-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 18 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Order Governing Case Progression
and Related Matters



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1. A pretrial conference was scheduled and held before the Court in the District Court on January 8, 2002. Appearances were:

For Plaintiffs: Patricia Knapp, Esq.
Lincoln, Nebraska

Shelley Horak, Esq.
Sioux City, Iowa

For Defendants: David A. Domina, Esq.
Omaha, Nebraska

2. Plaintiffs submitted a proposed list of witnesses and exhibits. Plaintiffs also filed a Motion *in Limine*.

3. Defendants filed their pretrial conference submission, including proposed stipulations of uncontroverted facts, a schedule of issues, a list of witnesses and an exhibit list.

4. The Court also received Defendants' trial brief.

5. After discussion among the Court and counsel, the following schedule was set and orders were entered:

a. The parties are ordered to submit simultaneous written briefs by February 8, 2002 addressing (i) Plaintiffs' Motion *in Limine* filed January 8, 2002, and (ii) whether this case should be tried to the Court or to a jury.

b. All discovery shall be completed by June 1, 2002.

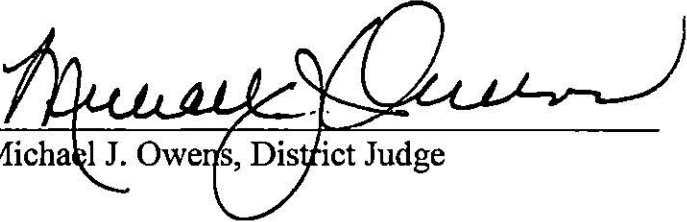
c. All pretrial motions, including motions *in limine* and motions for summary judgment shall be filed in time so they may be heard no later than July 2, 2002.

d. Trial is scheduled for nine days commencing August 20, 2002 at 9:00 a.m.

6. Defendants' Motion *in Limine* filed January 8, 2002 is moot, but Plaintiffs are ordered to answer Defendants' written interrogatories by February 8, 2002.

January 17, 2002.

BY THE COURT


Michael J. Owens, District Judge

David A. Domina, #11043
Nora M. Kane, #21562
Domina Law pc
1065 N. 115th St., Ste. 150
Omaha, NE 68154-4423
(402) 493-4100

Attorneys for Defendants

Patricia Knapp, #17718
1614 N. 31st Street
Lincoln, NE 68503
(402) 464-8537

Shelley Horak, Esq
1306 Pierce Street
Sioux City, IA 51105
(712) 258-1475

Attorneys for Plaintiffs

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife,
et al.

Plaintiffs,

v.

James D. Pillen,
et al.

Defendants.

Case No. C100-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 24 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

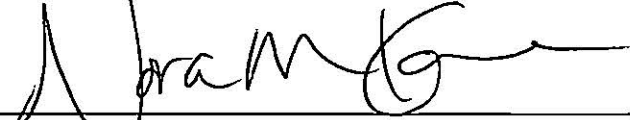
Notice of Service

Defendants, by and through their undersigned attorney, certify that a true and correct copy of Defendants' Supplemental Requests for Production of Documents were served by first class, United States mail, postage prepaid, on the 23rd day of January, 2002 to:

Patricia Knapp, Esq.
1614 N. 31st Street
Lincoln, NE 68503

Shelley Horak, Esq
1306 Pierce Street
Sioux City, IA 51105

James D. Pillen, *et al*, Defendants,

By 

David A. Domina, #11043
Nora M. Kane, #21562
Domina Law pc
1065 N. 115th St., Ste. 150
Omaha, NE 68154-4423
(402) 493-4100

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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	ANNA MCINTOSH
vs.	)	DATE TAKEN:
	)	May 30, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

TOTAL: \$102.75

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
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Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	BILLY SMITH
vs.	)	DATE TAKEN:
	)	May 30, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

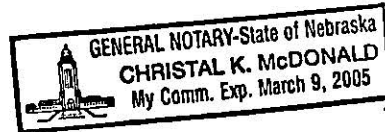
JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$213.25

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.) Case No. CI00-69
Stephens, Husband and Wife;)
et al.,) CERTIFICATE OF
) DEPOSITION
Plaintiffs,) DEPOSITION OF:
) JANICE SMITH
vs.) DATE TAKEN:
) May 30, 2001
James D. Pillen, et al.,)
)
Defendants.) DEPOSITION TAKEN ON
) BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

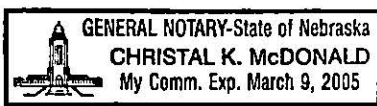
JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$122.25

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	STAN CZARNIK
vs.	)	DATE TAKEN:
	)	May 31, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

TOTAL: \$190.50

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	WENDELL FRANCIS
vs.	)	DATE TAKEN:
	)	May 31, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

TOTAL: \$115.75

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.) Case No. CI00-69
Stephens, Husband and Wife;)
et al.,) CERTIFICATE OF
) DEPOSITION
Plaintiffs,) DEPOSITION OF:
) ARLETTA FRANCIS
vs.) DATE TAKEN:
) May 31, 2001
James D. Pillen, et al.,)
)
Defendants.) DEPOSITION TAKEN ON
) BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

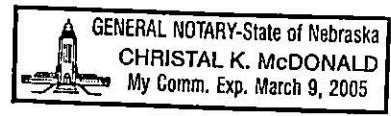
TOTAL: \$107.00

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Christal K. McDonald
CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.) Case No. CI00-69
Stephens, Husband and Wife;)
et al.,) CERTIFICATE OF
) DEPOSITION
Plaintiffs,) DEPOSITION OF:
) DELMAR KEEHN
vs.) DATE TAKEN:
) May 30, 2001
James D. Pillen, et al.,)
)
Defendants.) DEPOSITION TAKEN ON
) BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$167.75

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	DANIEL KASPAR
vs.	)	DATE TAKEN:
	)	May 30, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

TOTAL: \$102.75

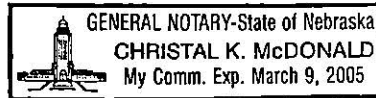
FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Christal K. McDonald
GENERAL NOTARY PUBLIC

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	DORIAN KASPAR
vs.	)	DATE TAKEN:
	)	May 30, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

TOTAL: \$190.50

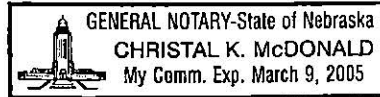
FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.) Case No. CI00-69
Stephens, Husband and Wife;)
et al.,) CERTIFICATE OF
) DEPOSITION
Plaintiffs,) DEPOSITION OF:
) JAMES MCINTOSH
vs.) DATE TAKEN:
) May 30, 2001
James D. Pillen, et al.,)
)
Defendants.) DEPOSITION TAKEN ON
) BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

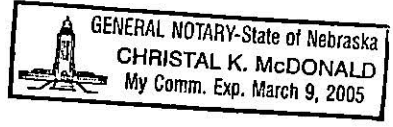
TOTAL: \$236.00

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne R. Shenille
BY LAVONNE R. SHENILLE CLERK

Christal K. McDonald
CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	BEVERLY KEMPER
vs.	)	DATE TAKEN:
	)	May 29, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

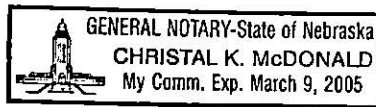
JAN 31 2007

Julianne M. Howell
BY LAWYER'S CLERK

TOTAL: \$281.50

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	EARL STEPHENS
vs.	)	DATE TAKEN:
	)	May 29, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$289.25

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	KATHLEEN STEPHENS
vs.	)	DATE TAKEN:
	)	May 29, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

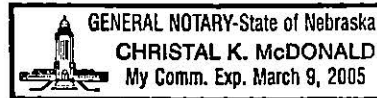
JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$240.50

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	BRADLEY STEPHENS
vs.	)	DATE TAKEN:
	)	May 29, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

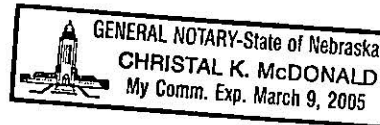
JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$193.75

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.) Case No. CI00-69
Stephens, Husband and Wife;)
et al.,) CERTIFICATE OF
) DEPOSITION
Plaintiffs,) DEPOSITION OF:
) CINDY STEPHENS
vs.) DATE TAKEN:
) May 29, 2001
James D. Pillen, et al.,)
)
Defendants.) DEPOSITION TAKEN ON
) BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

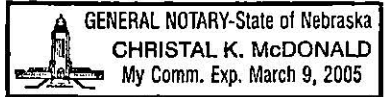
JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

TOTAL: \$180.75

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



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IN THE DISTRICT COURT OF
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M.)	Case No. CI00-69
Stephens, Husband and Wife;)	
et al.,	)	CERTIFICATE OF
	)	DEPOSITION
Plaintiffs,	)	DEPOSITION OF:
	)	NEAL KEMPER
vs.	)	DATE TAKEN:
	)	May 29, 2001
James D. Pillen, et al.,)	
)	
Defendants.	)	DEPOSITION TAKEN ON
	)	BEHALF OF DEFENDANTS

ORIGINAL DEPOSITION
IN POSSESSION OF:

DAVID A. DOMINA
Attorney at Law
DOMINA LAW OFFICE, P.C.
1065 North 115 Street
Suite 150
Omaha, NE 68154-4423

TOTAL: \$132.00

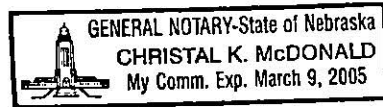
FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JAN 31 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Christal K. McDonald

CHRISTAL K. MCDONALD, RPR
COURT REPORTER AND
GENERAL NOTARY PUBLIC



K & M REPORTING
P.O. Box 306, Norfolk, NE 68702-0306
(402) 644-4685

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife,
et al.

Plaintiffs,

v.

James D. Pillen,
et al.

Defendants.

Case No. C100-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

MAR 01 2002

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

Notice of Service

Defendants, by and through their undersigned attorney, certify that Defendants' Supplemental Answers to Interrogatories and Defendants' Supplemental Responses to Requests for Production of Documents were served by First class, United States mail, postage prepaid; Facsimile; E-mail on February 28 2002, to:

Patricia Knapp, Esq.
1614 N. 31st Street
Lincoln, NE 68503

Shelley Horak, Esq
1306 Pierce Street
Sioux City, IA 51105

James D. Pillen, *et al*, Defendants,

By *Nora M Kane*

David A. Domina, #11043

Nora M. Kane, #21562

Domina Law pc

1065 N. 115th St., Ste. 150

Omaha, NE 68154-4423

(402) 493-4100

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M.)
 STEPHENS, Et. Al.,)
)
 Plaintiffs,)
)
 vs.)
)
 JAMES D. PILLEN, Et. Al.,)
)
 Defendants.)

CASE NO. CI00-69
 FILED IN THE OFFICE OF THE CLERK
 OF THE DISTRICT COURT
 BOONE COUNTY, NEBRASKA

MAY 22 2002

ORDER

Lavonne M. Sherrill
 BY LAVONNE M. SHERRILL, CLERK

THIS MATTER comes on for decision on the defendants' Motion in Limine filed January 8, 2002.

The defendants, through their motion, seek an Order limiting plaintiffs' evidence at trial for their failure to answer, object to, or otherwise respond to Interrogatories and Requests for Production of Documents served by defendants' counsel. Defendants also seek to limit witnesses and documentary evidence for the reason that plaintiffs had not disclosed such information at the time of the pretrial conference on January 8, 2002.

As was stated at the pretrial conference and the Order Governing Case Progression and Related Matters entered by the Court on January 18, 2002, this Motion is moot and is therefore overruled.

IT IS SO ORDERED.

BY THE COURT:

Michael J. Jones

 DISTRICT JUDGE

pc: Patricia A. Knapp
David Domina

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M.)
 STEPHENS, Et. Al.,)
)
 Plaintiffs,)
)
 vs.)
)
 JAMES D. PILLEN, Et. Al.,)
)
 Defendants.)

CASE NO. CI00-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

MAY 22 2002

ORDER

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

THIS MATTER comes on for decision on the plaintiffs' Motion in Limine filed January 8, 2002. Hearing on such motion was held on January 8, with the plaintiffs appearing by Patricia Knapp and Shelly Horak. The defendants appeared by David Domina.

The plaintiffs, through their motion, seek an Order limiting defendants' evidence at trial generally with respect to the economic impact that defendants' hog confinement facilities may have upon the Boone County, Nebraska, area (Paragraphs A, B, C, D, and F of Motion in Limine, as amended). Plaintiffs also seek a limiting order as to evidence intended or reasonably calculated to show the income or net worth of the plaintiffs (Paragraph H).

The Court notes and appreciates that in their brief, plaintiffs withdrew paragraphs E, G, and I of their original Motion in Limine, as well as a portion of Paragraph F. The ruling contained in this Order is therefore limited to those remaining portions of the Motion.

Upon consideration of the pleadings and briefs of counsel, the Court preliminarily determines that the use of economic data may be relevant and helpful to the Court in considering the issues before it. While the Court is unable to locate any Nebraska based decisions regarding this particular issue, there are cases as cited by defendants that generally allow the introduction of such evidence. *Garland Grain Co. v. D-C Homeowners Improvement Ass'n*, 393 S.W.2d 635 (Tex. Civ. App. 1965)

and *Koseris v. J.R. Simplot Co.*, 352 P.2d 235 (Idaho, 1960). Upon the Court's own review of such cases, particularly *Koseris*, the Court determines that such evidence may well be relevant and should therefore be admitted.

With respect to Paragraph H of plaintiffs' Motion, the Court preliminarily concludes that the evidence of plaintiffs' net worth and income is not relevant to the issues before the Court. Absent a showing by defendants at trial that such evidence will be relevant, that portion of the plaintiffs' Motion in Limine is sustained.

ANY REQUEST FOR RELIEF BY ANY PARTY NOT SPECIFICALLY GRANTED BY THIS ORDER IS DENIED.

BY THE COURT:


DISTRICT JUDGE

pc: Patricia A. Knapp
David Domina

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M.)
 STEPHENS, Et. Al.,)
)
 Plaintiffs,)
)
 vs.)
)
 JAMES D. PILLEN, Et. Al.,)
)
 Defendants.)

CASE NO. CI00-69 FILED IN THE OFFICE OF THE CLERK
 OF THE DISTRICT COURT
 BOONE COUNTY, NEBRASKA

MAY 22 2002

ORDER

Lavorine M. Sherrill
 BY LAVORINE M. SHERRILL, CLERK

THIS MATTER comes on for decision on the Plaintiffs' Request for Jury Trial set forth in the prayer of their Petition filed December 27, 2000. At a pretrial conference held before the Court on January 8, 2002, the issue of entitlement to a trial by jury was addressed by the Court and counsel. All parties were given the opportunity to submit briefs on such issue, and such briefs were timely submitted by counsel.

Both the plaintiffs and defendants cite the case of *Goeke v. National Farms*, 245 Neb. 262, 512 N.W.2d 626 (1994), although they apparently differ as to the effect of that decision on the issue before the Court. Plaintiffs contend that under the rationale of *Goeke*, the Court can determine damages only if it first determines that the plaintiffs are entitled to equitable relief, *i.e.*, an injunction. They contend, however, that if the Court denies equitable relief, a jury may nevertheless award damages. Defendants, on the other hand, assert that the action filed by the plaintiffs is equitable in nature, and their request for trial by jury is improper.


In *Goeke*, *supra*, the Nebraska Supreme Court stated :

When an equity court has properly acquired jurisdiction in a suit for equitable relief, it will make a complete adjudication of all matters properly presented and involved in the case and ordinarily will grant such relief, *legal* and equitable, as may be required and thus avoid unnecessary litigation.

The Court finds that the pleadings herein allege an action in equity and that the plaintiffs are not entitled to a trial by jury. Accordingly, plaintiffs' demand for trial by jury is denied.

IT IS SO ORDERED.

BY THE COURT:



DISTRICT JUDGE

pc: Patricia A. Knapp
David Domina

COPY

IN THE DISTRICT COURT OF Boone County, NEBRASKA
222 South 4th
Albion NE 68620

SUBPOENA

Earl P Stephens etal vs. Pillen, James, D. etal, NE Gen Partn.

Case ID: CI 00 69
Old Case ID:

TO: Dean Settje

You are ordered to appear before this court on:

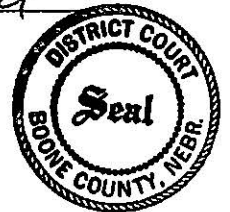
AUGUST 20, 2002, AT 9:00AM in Boone County District Courtroom 1
to testify as a witness in this case on behalf of Earl P Stephens etal..

If you appear as a witness, you may be entitled to be paid witness fees and mileage for each day you are in court.

Date: August 1, 2002 BY THE COURT:

Lavonne M. Sherrill
Clerk

For questions, contact: Patricia A Knapp
1614 N. 31st St.
Lincoln, NE 68503
(402)464-8537



Address of person to be served

Dean Settje
4700 W. Rock Creek Road
Raymond, NE 68428

"Witness should call counsel for the Plaintiffs to ascertain the precise time his testimony will be required."

Method of Service: Certified Mail

RETURN

I certify that on August 8, 2002, I served this subpoena on Dean Settje by certified mail on AUG 15 2002

Date: 8-14-02 Served by: Pat Knapp

Fees for service: \$4.42

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

Lavonne M. Sherrill
BY LAVONNE M. SHERRILL, CLERK

COPY



COMPLETE THIS SECTION

Items 1, 2, and 3. Also complete
Registered Delivery is desired,
and address on the reverse
the card to you.
back of the mailpiece,
limits.

COMPLETE THIS SECTION ON DELIVERY

Received by (Please Print Clearly)
K.C. VASA
C. Signature
K.C. Vasa

B. Date of Delivery

D. Is delivery address different from item 1?
if YES, enter delivery address below.

Agent
 Addressee
 Yes
 No

3. Service Type

Certified Mail
 Registered Mail
 Insured Mail

Express Mail
 Return Receipt for Merchandise
 C.O.D. (Extra Fee)

Yes

102595-99M-1789



First-Class Mail
Postage & Fees
USPS
Permit

• Sender: Please print your name, address, and ZIP+4

Pat Knapp
1614 N. 3rd
Lincoln

04



DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife,
et al.

Plaintiffs,

v.

James D. Pillen,
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Defendants.

Case No. C100-69 FILED IN THE OFFICE OF THE CLERK
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AUG 15 2002

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BY LAVONNE M. SHERRILL, CLERK

Defendants' Final
Witness & Exhibit List

1. Defendants James D. Pillen, *et al.* respectfully submit their final witness and exhibit lists.

I. Witnesses

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Jay Rutten
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Coordinator
3214 25th Street
Columbus, NE 68601

John Bellar
Columbus NE (Exterminator)

Brian Fuchs
Climate Resource Specialist
University of Nebraska Institute of Agriculture
and Natural Resources
High Plains Climate Center
236 LW Chase Hall
Lincoln, NE 68583-0728
(402) 472-6706

Charles Lamphear
University of Nebraska College Business Administration
CPA Hall - City Campus
Lincoln, NE 68583

Fred A. Lockwood & Co.
1110 Haven Circle
Scottsbluff, NE

Dr. Dwaine S. Bundy
Iowa State University
212 Davidson Hall
Ames, IA 50014

II. Exhibits

2. See attached list.

August 13, 2002.

James D. Pillen, M & P Land Co., Partnership; et
al., Defendants,

By 

David A. Domina, #11043

Nora M. Kane, #21562

Domina Law pc

1065 N. 115th St., Ste. 150

Omaha, NE 68154-4423

(402) 493-4100

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Defendants' Final Witness and Exhibits Lists were served by postage prepaid first class mail on August 13, 2002

Patricia Knapp, Esq.
1614 N. 31st St.
Lincoln, NE 68503

Shelley Horak, Esq.
600 Fourth St., #905
Sioux City, IA 51101



David A Domina #11043

#21562

601109
34682

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

**Earl P. and Kathleen M. Stephens,
Husband and Wife; et al.,**

Case No. C100-69

Plaintiffs,

v.

James D. Pillen, et al.,

Defendants.

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		DEQ file for Northern Nance County Facility					
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DISTRICT COURT OF BOONE COUNTY, NEBRASKA

FILED IN THE OFFICE OF THE CLERK
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BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife,
et al.

Case No. C100-69

AUG 16 2002

Plaintiffs,

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BY LAVONNE M. SHERRILL, CLERK

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Lincoln, NE 68583

Fred A. Lockwood & Co.
1110 Haven Circle
Scottsbluff, NE

Dr. Dwaine S. Bundy
Iowa State University
212 Davidson Hall
Ames, IA 50014

Al Larson
Al Larson Distributing, Inc.
13105 Hamilton St.
Omaha, NE 68154


II. Exhibits

2. See attached list.

August 14, 2002.

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By


David A. Domina, #11043

Nora M. Kane, #21562

Domina Law pc
1065 N. 115th St., Ste. 150

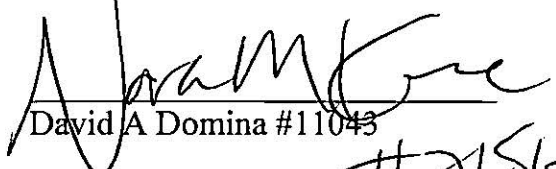
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		Size Misconceptions of Proposed Operations					

		Article - Key to Counties' Vitality: Location, Location, Location					
		USDA Maps - Demographics					

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife,
et al.

Case No. C100-69

AUG 20 2002

Plaintiffs,

Second Amended
Defendants' Final
Witness & Exhibit List

LAVONNE M. SHERRILL, CLERK
BY *Alan L. Kiesel*, DEPUTY

v.

James D. Pillen,
et al.

Defendants.

1. Defendants James D. Pillen, *et al.* respectfully submit their final witness and exhibit lists.

I. Witnesses

Jim Pillen, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Deborah Rasby
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Dan O'Connor
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

James Hemmer
RR 1, Box 519
Genoa, NE 68640
402-993-2447

Tom Spelts
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Earl Stephens
RR 2, Box 163
St. Edward, NE 68660
402-678-2720

Kathleen Stephens
RR 2, Box 163
St. Edward, NE 68660
402-678-2720

Brad Stephens
RR 2
St. Edward, NE 68660
402-678-3421

Cindy Stephens
RR 2
St. Edward, NE 68660
402-678-3421

Neal Kemper
RR 2, Box 168
St. Edward, NE 68660
402-678-3350

Beverly Kemper
RR 2, Box 168
St. Edward, NE 68660
402-678-3350

James McIntosh
RR 2, Box 136
St. Edward, NE 68660
402-678-2674

Anna McIntosh
RR 2, Box 136
St. Edward, NE 68660
402-678-2674

Bill Smith
RR 2
St. Edward, NE 68660
402-678-3317

Janice Smith
RR 2
St. Edward, NE 68660
402-678-3317

Delmar Keehn
RR 1
St. Edward, NE 68660
402-678-2806

Stan Czarnik
RR 1, Box 55
St. Edward, NE 68660
402-678-2506

Dan Kaspar
RR 2, Box 56A
St. Edward, NE 68660
402-678-2536

Dorian Kaspar
RR 2, Box 56A
St. Edward, NE 68660
402-678-2536

Wendell Francis
RR 2, Box 159
St. Edward, NE 68660
402-678-2889

Arletta Francis
RR 2, Box 159
St. Edward, NE 68660
402-678-2889

Keith Hoshor
RR 2, Box 174
St. Edward, NE 68660
402-678-3437

Gary Choate
BV 82 Co.
St. Edward, NE 68660

Mr. Mike Laska
RR 2, Box 158
St. Edward, NE 68660
402-678-2581

D. Fern Smith
Route 1, Box 52
St. Edward, NE 68660

Mr. Tom Smith
Route 1, Box 253
St. Edward, NE 68660
402-678-2704

Dean Settje
Settje Agri-Services & Engineering
4700 W. Rock Creek Rd.
Raymond, NE 68428
402-783-2100

Tom Petznick, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Brett Bonwell
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Les Griess, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Cory Faust, DVM
PST
3214 25th Street
Columbus, NE 68601
402-564-0407

Jay Rutten
PST Environmental Assurance
Coordinator
3214 25th Street
Columbus, NE 68601

John Bellar
Columbus NE (Exterminator)

Brian Fuchs
Climate Resource Specialist
University of Nebraska Institute of Agriculture
and Natural Resources
High Plains Climate Center
236 LW Chase Hall
Lincoln, NE 68583-0728
(402) 472-6706

Charles Lamphear
University of Nebraska College Business Administration
CPA Hall - City Campus
Lincoln, NE 68583

Fred A. Lockwood & Co.
1110 Haven Circle
Scottsbluff, NE

Dr. Dwaine S. Bundy
Iowa State University
212 Davidson Hall
Ames, IA 50014

Al Larson
Al Larson Distributing, Inc.
13105 Hamilton St.
Omaha, NE 68154

Ed Parks
P.O. Box 345
Elgin, NE 68636

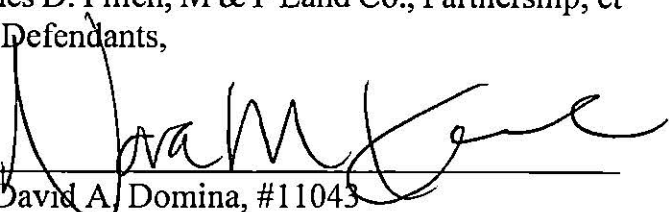
II. Exhibits

2. See attached list.

August 19, 2002.

James D. Pillen, M & P Land Co., Partnership; et al., Defendants,

By



David A. Domina, #11043
Nora M. Kane, #21562
Domina Law pc
1065 N. 115th St., Ste. 150
Omaha, NE 68154-4423
(402) 493-4100

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Defendants' Final Witness and Exhibits Lists were served by Facsimile on August 19, 2002

Patricia Knapp, Esq.
1614 N. 31st St.
Lincoln, NE 68503

Shelley Horak, Esq.
600 Fourth St., #905
Sioux City, IA 51101


David A. Domina #11043

601109
34682

DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,
Husband and Wife; et al.,

Case No. C100-69

Plaintiffs,

v.

James D. Pillen, et al.,

Defendants.

Defendants' Exhibit List

PL	DF	Description	OFF'D	OBJ	RCV'D	NOT RCV'D	DATE
		US Census Bureau State and County QuickFacts – Boone County Nebraska					
		USA Counties Profile – Boone County Nebraska					
		1999 County Business Patterns for Boone County Nebraska – US Census Bureau					
		1997 Economic Census: Summary Statistics for Boone County, NE					
		1997 Census of Agriculture County Profile – Boone Nebraska					
		Boone County Economic Benefit Analysis					
		Nance County Economic Benefit Analysis					
		Chart - Economic Impact - Boone County					

		Chart - Defendants' Demographics of Personnel					
		Chart - Plats					
		Chart - Location of Plaintiffs from Locations of Defendants					
		Nebraska Wind Summaries for Odor Management Planning and CDs containing weather data and printed version of Monroe data					
		Plaintiffs' calendars (2)					
		Comparison graph of actual wind data and plaintiffs' handwritten notes					
		Wind Rose - 1999 (with underlying data)					
		Wind Rose- 2000 (with underlying data)					
		Community Banks by County – Results for Boone County					
		County Population Estimates for July 1, 1999					
		County Estimates for Medial Household Income for Nebraska: 1993					
		Profile of Selected Social Characteristics: 2000 – Geographic Area: Nebraska					
		Profile of General Demographic Characteristics: 2000 Geographic Area: Nebraska					
		NebFacts publication – Livestock Waste Management Act – Revised March 2000					

		Odor testing data and analysis from two university studies conducted in field environments using ALD/Pit Remedy					
		2001 Nebraska Swine Report					
		DEQ file for Mt. Echo					
		DEQ file for Northern Plains					
		DEQ file for Beaver Valley Reproduction Center					
		DEQ file for Northern Nance County Facility					
		Feb. 23, 2001 letter from DEQ notifying that the Construction Permit for PST Northern Nance County was issued on February 20, 2001					
		Manure Characteristics – Manure Management Systems Series					
		05/09/01 Beaver Valley Pork Scoring Sheet					
		Animal Science Products, Inc. – information about MicroAid					
		Current Employees List					
		Terminated Employees List					
		Video Tape – The Impact of Nebraska’s Swine Industry on Rural Economics – Dr. Mike Brumm					
		Newspaper Article from the St. Edward Advance, Thursday February 8, 2001 – An Environmental Steward Award is Presented to PST					
		Boone County, Nebraska Zoning Regulations – 1999					
		Nance County, Nebraska Zoning Regulations –					

		January 15, 2001 Feedstuffs article – Hog Industry Insider					
		01/01/00 Partnership Agreement of Inland Foods Partnership					
		October 21, 1998 Cover letter from National Producers Council with Odor/Environmental Assessment Report conducted October 7, 1998 for Beaver Valley Farms					
		October 21, 1998 cover letter from National Pork Producers Council with Odor/Environmental Assessment Report conducted October 6, 1998 for Northern Plains					
		Handwritten notes re: swine facilities					
		Heartland Builder Co. site plans for Beaver Valley facility (3 sets)					
		Heartland Builder Co. site plans for Northern Nance complex (3 sets)					
		Videotape: PST Progressive Swine Technologies; “Changing for the Future”					
		Chart - Summary of Odor Complaints					
		Excerpts - Deposition Admissions of Earl P.					
		Excerpts - Deposition Admissions of Kathleen M. Stephens					

		Excerpts - Deposition Admissions of Donald C. Loseke					
		Excerpts - Deposition Admissions of Wanda Loseke					
		Excerpts - Deposition Admissions of Neal E.					
		Excerpts - Deposition Admissions of Beverly E. Kemper					
		Excerpts - Deposition Admissions of Bradley E. Stephens					
		Excerpts - Deposition Admissions of Cindy Stephens					
		Excerpts - Deposition Admissions of Bill E. Smith					
		Excerpts - Deposition Admissions of Janice Smith					
		Excerpts - Deposition Admissions of James					
		Excerpts - Deposition Admissions of Anna McIntosh					
		Excerpts - Deposition Admissions of Delmer Keehn					
		Excerpts - Deposition Admissions of Stanley A. Czarnik					
		Excerpts - Deposition Admissions of Daniel S.					
		Excerpts - Deposition Admissions of Dorian Kaspar					
		Excerpts - Deposition Admissions of Wendell					
		Excerpts - Deposition Admissions of Arletta Francis					
		PST - Dietary information					
		PST - Lagoon Complying Information					

		Report of Dwaine S. Bundy, Ph.D., P.E., and Executive Summary thereof					
		Curriculum Vitae of Dwaine Bundy, Ph.D.					
		Proposed Performance Standard authored by Dwaine Bundy					
		Article - Odour prevention and Control of Organic Sludge and Livestock Farming					
		Chart and photographs - Anaerobic Technology Cross-Section					
		Charts and Photographs - Still Day					
		Report of Lon W. Keim, M.D. and Executive Summary					
		Curriculum Vitae of Lon William Keim, M.D.					
		Report of Dean Settje					
		Curriculum Vitae of Dean Settje					
		Settje Agri-Services Engineering 11/06/00 Submission, Drawings and Related Items					
		Rules and Regulations Pertaining to Livestock Waste Control, Nebraska Department of Environmental Quality					
		Construction Photographs and Drawings					
		Executives Summary and Report of Rick Koelsch. Livestock Environmental Engineer, University of Nebraska Cooperative Extension Service					

		University of Minnesota Extension Service Article - Hog Manure Boosts Corn Yield More than Fertilizer in U of M Study					
		Value Added Agriculture Cost/Benefit Analysis					
		Pest Tech Inc. John Beller Report					
		Curriculum Vitae of John Beller					
		Pest Tech Inc. Brochure and Mission Statement					
		Report of Fred Lockwood, C.P.A.					
		Curriculum Vitae of Fred Lockwood					
		Letter of Senator Curt Bromm dated 11/29/01					
		Article - Nebraska is Still Skirting Recession					
		News Stories and Articles concerning Livestock Industry					
		Summary Real Estate Taxes Boone and Greeley County					
		Five Year Record of Assessed Values of Adjoining Landowners					
		Chart - Pork Producers Compensation					
		Notes and Letters of Persons Supporting PST Development					
		Loup Power District Undated Letter					
		Werner Service & Trucking letter of 10/18/01					
		Size Misconceptions of Proposed Operations					

		Article - Key to Counties' Vitality: Location, Location, Location					
		USDA Maps - Demographics					
		Scorecard.org air and water pollutants data					

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M. STEPHENS,)
husband and wife; DONALD C. and WANDA)
LOSEKE, husband and wife; NEAL E. and)
BEVERLY E. KEMPER, husband and wife;)
BRADLEY E. and CINDY STEPHENS,)
husband and wife; BILL E. and JANICE SMITH,)
husband and wife; JAMES and ANNA)
MCINTOSH, husband and wife; DELMER)
KEEHN; STANLEY A. CZARNIK; DANIEL S.)
and DORIAN KASPAR, husband and wife; and)
WENDELL and ARLETTA FRANCIS,)
husband and wife,)

Plaintiffs,)

vs.)

JAMES D. PILLEN, M & P LAND COMPANY,)
and BEAVER VALLEY PORK, A Nebraska)
general partnership; JAMES D. PILLEN,)
ROBERT L. GOTTSCH, BRETT GOTTSCH,)
and WOLBACH FOODS PARTNERSHIP, a)
Nebraska general partnership; JAMES D. PILLEN,)
JAMES HEMMER, DEBORAH RASBY, DAN)
O'CONNOR, and NORTHERN PLAINS)
PARTNERSHIP, a Nebraska general partnership;)
and JAMES D. PILLEN, DANIEL O'CONNOR,)
DEBORAH RASBY, and PST NORTHERN)
NANCE PARTNERSHIP, a Nebraska general)
partnership,)

Defendants.)

CASE NO. CI00-69

ORDER FOR ORAL ARGUMENT

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA


JUL 23 2004

Ellen J. Hirsch
CLERK OF DISTRICT COURT

In accordance with the Mandate of the Nebraska Court of Appeals filed herein on July 21, 2004, and the Judgment on Mandate subsequently entered by this Court, the Court sets the matter for oral argument on August 23, 2004, at 2:30 p.m. The issue to be argued is general damages to be awarded to the following plaintiffs: Earl P. Stephens, Kathleen M. Stephens, Bradley E. Stephens, Cindy Stephens, Wendell Francis, Arletta Francis, James McIntosh, Anna McIntosh, Dorian Kaspar, Danial S. Kaspar, and Wanda Loseke.

No further evidence shall be adduced at such hearing.

BY THE COURT:


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Ellen L. Hirsch, Clerk of the District Court,
Boone County, Nebraska do hereby certify that a
copy of the above was sent to Counsel and/or parties
in the above entitled case.

7-23-04 elh

Date District Court Clerk

PATRICIA KNAPP
DAVID DOMINA

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

Nebraska Court of Appeals

JUL 26 2004

Itemized Cost Statement

Ellen L. Hirsch
CLERK OF DISTRICT COURT

David A. Domina
DOMINA LAW FIRM
2425 S. 144th St.
Omaha, NE 68144 3267

Costs in the Court of Appeals are
to be paid by: appellee

Statement Date: July 20, 2004
Case Caption: Stephens v. Pillen

Trial Court/Tribunal: Boone County District Court
Trial Court No.: CI00-69
Court of Appeals No.: A-02-001360

Costs in the Court of Appeals

Docket Fee	\$	50.00
Automation Fee	\$	6.00
Legal Services Fee	\$	5.00
Transcript	\$	12.00
Total Costs	\$	73.00

NOTE: Costs are taxed in accordance with Neb. Rev. Stat. § 25-1915. DO NOT MAKE ANY PAYMENT TO THE SUPREME COURT. Make payment to the Clerk of the District Court or the Clerk of the Workers' Compensation Court or other tribunal where this case originated.

District Court of Boone County, Nebraska

Earl P. and Kathleen M. Stephens, husband and wife; Donald C. and Wanda Loseke, husband and wife; Neal E. and Beverly E. Kemper, husband and wife; Bradley E. and Cindy Stephens, husband and wife; Bill E. and Janice Smith, husband and wife; James and Anna McIntosh, husband and wife; Delmer Keehn; Stanley A. Czarnik; Daniel S. and Dorian Kaspar, husband and wife; and Wendell and Arletta Francis, husband and wife,

Plaintiffs,

v.

James D. Pillen, M & P Land Company, and Beaver Valley Pork, A Nebraska General Partnership; James D. Pillen, Robert L. Gottsch, Brett Gottsch, and Wolbach Foods Partnership, a Nebraska General Partnership; James D. Pillen, James Hemmer, Deborah Rasby, Dan O'Connor, and Northern Plains Partnership, a Nebraska General Partnership; and James D. Pillen, Daniel O'Connor, Deborah Rasby, and PST Northern Nance Partnership, a Nebraska General Partnership,

Defendants.

Case No. CI00-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

AUG 16 2004

ELLEN L. HIRSCH, CLERK
By *Carolyn J. Frost* Deputy

Withdrawal as Counsel for Defendants
and Request for Judicial Approval


1. David A. Domina, #11043 and DOMINALAW pc llo, 2425 South 144th Street, Omaha, Nebraska, 68144-3267, respectfully withdraw, effective immediately, as counsel for each and all Defendants in this litigation. This withdrawal is made at the request and direction of the Defendants.

2. Withdrawing counsel respectfully request that the Court issue an Order approving this withdrawal effective immediately.

3. Withdrawing counsel has delivered the file to the Defendants at their request, and has offered to cooperate with Defendants new counsel, Mr. Terry C. Dougherty, Woods & Aitken, L.L.P., 301 South 13th Street, Suite 500, Lincoln, Nebraska, 68508, effective immediately, in all respects.

Dated this 13th day of August, 2004.

James D. Pillen, M & P Land Company, and Beaver Valley Pork, A Nebraska General Partnership; James D. Pillen, Robert L. Gottsch, Brett Gottsch, and Wolbach Foods Partnership, a Nebraska General Partnership; James D. Pillen, James Hemmer, Deborah Rasby, Dan O'Connor, and Northern Plains Partnership, a Nebraska General Partnership; and James D. Pillen, Daniel O'Connor, Deborah Rasby, and PST Northern Nance Partnership, a Nebraska General Partnership, Defendants

By: 
David A. Domina, #11043
Claudia L. Stringfield, #22824
DOMINALAWpc llo
2425 South 144th Street
Omaha, NE 68144-3267
(402) 493-4100

Attorneys for Defendants

District Court of Boone County, Nebraska

Earl P. and Kathleen M. Stephens, husband and wife; Donald C. and Wanda Loseke, husband and wife; Neal E. and Beverly E. Kemper, husband and wife; Bradley E. and Cindy Stephens, husband and wife; Bill E. and Janice Smith, husband and wife; James and Anna McIntosh, husband and wife; Delmer Keehn; Stanley A. Czarnik; Daniel S. and Dorian Kaspar, husband and wife; and Wendell and Arletta Francis, husband and wife,

Plaintiffs,

v.

James D. Pillen, M & P Land Company, and Beaver Valley Pork, A Nebraska General Partnership; James D. Pillen, Robert L. Gottsch, Brett Gottsch, and Wolbach Foods Partnership, a Nebraska General Partnership; James D. Pillen, James Hemmer, Deborah Rasby, Dan O'Connor, and Northern Plains Partnership, a Nebraska General Partnership; and James D. Pillen, Daniel O'Connor, Deborah Rasby, and PST Northern Nance Partnership, a Nebraska General Partnership,

Defendants.

Case No. CI00-69

Certificate of Service

FILED IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT BOONE COUNTY, NEBRASKA

AUG 16 2004

ELLEN L. HIRSCH, CLERK

By *Candace J. Frost* Deputy

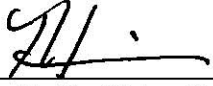
I hereby certify that on August 13, 2004, a true and correct copy of Defendant's Withdrawal as Counsel for Defendants and Request for Judicial Approval was delivered by First class, United States mail, postage prepaid; Facsimile; E-mail to the following:

Patricia A. Knapp, Esq.
P.O. Box 830902
Lincoln, NE 68583-0902

Shelley Horak, Esq.
1306 Pierce Street
Sioux City, IA 51105

All Defendants
c/o James D. Pillen
PST Northern Nance Partnership
3214 25th Street
Columbus, NE 68601

Anna L. Stehlik, Esq.
Morrison Enterprises
P.O. Box 609
Hastings, NE 68902-0609

 #20544 For

Claudia L. Stringfield, #22824

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

AUG 16 2004

Earl P. and Kathleen M. Stephens,
et al.,)

Case No. CI00-69

Ellen L. Hirsch
CLERK OF DISTRICT COURT

Plaintiffs,)

v.)

ENTRY OF APPEARANCE

James D. Pillen, et al.,)

Defendants.)

COME NOW Terry C. Dougherty and Jeffery T. Peetz of Woods & Aitken LLP to enter their appearance on behalf of Defendants, James D. Pillen, et al. All matters with respect to these Defendants in this action may be served upon us as counsel of record.

DATED this 16th day of August, 2004.

JAMES D. PILLEN, et al., Defendants

By Jeffery T. Peetz
Terry C. Dougherty, No. 11064
Jeffery T. Peetz, No. 17386
WOODS & AITKEN LLP
Suite 500, 301 South 13th Street
Lincoln, Nebraska 68508
Telephone: 402-437-8500

Its Attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing upon all parties hereto by mailing a true and correct copy thereof by U. S. First Class Mail, postage prepaid and properly addressed, on this 16th day of August, 2004, to the following:

Patricia A. Knapp, Esq.
P.O. Box 830902
Lincoln, NE 68583-0902

Shelley Horak, Esq.
1306 Pierce Street
Sioux City, IA 51105

Anna L. Stehlik, Esq.
Morrison Enterprises
P.O. Box 609
Hastings, NE 68902-0609



Jeffery T. Peetz, Defendant's Attorney

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

AUG 16 2004

Earl P. and Kathleen M. Stephens,)
et al.,)
)
Plaintiffs,)
)
v.)
)
James D. Pillen, et al.,)
)
Defendants.)

Case No. CI00-69

Ellen L. Hirsch
CLERK OF DISTRICT COURT

MOTION FOR CONTINUANCE

Comes now the Defendants, James D. Pillen, et al. and moves the Court to enter an Order to continue the hearing on award of damages scheduled for Monday, August 23, 2004. In support of its Motion, Defendants submit the Affidavit of Jeffery T. Peetz, attached hereto as Exhibit "A".

DATED this 16th day of August, 2004.

JAMES D. PILLEN, et al., Defendants

By Jeffery T. Peetz
Terry C. Dougherty, No. 11064
Jeffery T. Peetz, No. 17386
WOODS & AITKEN LLP
Suite 500, 301 South 13th Street
Lincoln, Nebraska 68508
Telephone: 402-437-8500

Its Attorneys

CERTIFICATE OF SERVICE

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Patricia A. Knapp, Esq.
P.O. Box 830902
Lincoln, NE 68583-0902

Shelley Horak, Esq.
1306 Pierce Street
Sioux City, IA 51105

Anna L. Stehlik, Esq.
Morrison Enterprises
P.O. Box 609
Hastings, NE 68902-0609



Jeffery T. Peetz, Defendant's Attorney

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,)
 et al.,)
)
 Plaintiffs,)
)
 v.)
)
 James D. Pillen, et al.,)
)
 Defendants.)

Case No. CI00-69

**AFFIDAVIT OF
JEFFERY T. PEETZ**

STATE OF NEBRASKA)
) ss:
 COUNTY OF MADISON)

Affiant being first duly sworn on his oath, states and alleges as follows:

1. I am an attorney licensed and admitted to practice law in the State of Nebraska. I am one of the attorneys for Defendants, James D. Pillen et al. in the above-captioned matter. I have personal knowledge of the matters set forth herein.

2. On or about August 13, 2004, Attorney David A. Domina filed his Withdrawal as Counsel for Defendants and Request for Judicial Approval effective immediately.

3. As a result of Mr. Domina's withdrawal, Defendants have retained Woods & Aitken LLP as counsel of record. As newly retained counsel, we request an additional 60 days to become familiar with the facts of the case.

00164729

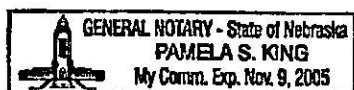
EXHIBIT "A"

Further Affiant saith not.

Dated this 16th day of August, 2004.

Jeffery T. Peetz
Jeffery T. Peetz

The foregoing instrument was acknowledged before me this 16th day of August, 2004 by Jeffery T. Peetz.



Pamela S. King
Notary Public

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,)
et al.,)

Case No. CI00-69

AUG 17 2004

Plaintiffs,)

ELLEN L. HIRSCH, CLERK
By *Candice J. Arnold* Deputy

v.)

ENTRY OF APPEARANCE

James D. Pillen, et al.,)

Defendants.)

COME NOW Terry C. Dougherty and Jeffery T. Peetz of Woods & Aitken LLP to enter their appearance on behalf of Defendants, James D. Pillen, et al. All matters with respect to these Defendants in this action may be served upon us as counsel of record.

DATED this 16th day of August, 2004.

JAMES D. PILLEN, et al., Defendants

By *Jeffery T. Peetz*
Terry C. Dougherty, No. 11064
Jeffery T. Peetz, No. 17386
WOODS & AITKEN LLP
Suite 500, 301 South 13th Street
Lincoln, Nebraska 68508
Telephone: 402-437-8500

Its Attorneys

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Patricia A. Knapp, Esq.
P.O. Box 830902
Lincoln, NE 68583-0902

Shelley Horak, Esq.
505 Fifth Street, Suite 500
Sioux City, IA 51101

Anna L. Stehlik, Esq.
Morrison Enterprises
P.O. Box 609
Hastings, NE 68902-0609



Jeffery T. Peetz, Defendant's Attorney

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,)
et al.,)
)
Plaintiffs,)
)
v.)
)
James D. Pillen, et al.,)
)
Defendants.)

Case No. CI00-69

MOTION FOR CONTINUANCE

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

AUG 17 2004

ELLEN L. HIRSCH, CLERK

By *Candice J. Gross* Deputy

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DATED this 16th day of August, 2004.

JAMES D. PILLEN, et al., Defendants

By *Jeffery T. Peetz*
Terry C. Dougherty, No. 11064
Jeffery T. Peetz, No. 17386
WOODS & AITKEN LLP
Suite 500, 301 South 13th Street
Lincoln, Nebraska 68508
Telephone: 402-437-8500

Its Attorneys

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The undersigned hereby certifies that he served the foregoing upon all parties hereto by mailing a true and correct copy thereof by U. S. First Class Mail, postage prepaid and properly addressed, on this 16th day of August, 2004, to the following:

Patricia A. Knapp, Esq.
P.O. Box 830902
Lincoln, NE 68583-0902

Shelley Horak, Esq.
505 Fifth Street, Suite 500
Sioux City, IA 51101

Anna L. Stehlik, Esq.
Morrison Enterprises
P.O. Box 609
Hastings, NE 68902-0609



Jeffery T. Peetz, Defendant's Attorney

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

Earl P. and Kathleen M. Stephens,)
et al.,)
)
Plaintiffs,)
)
v.)
James D. Pillen, et al.,)
)
Defendants.)

Case No. CI00-69

**AFFIDAVIT OF
JEFFERY T. PEETZ**

STATE OF NEBRASKA)
) ss:
COUNTY OF MADISON)

Affiant being first duly sworn on his oath, states and alleges as follows:

1. I am an attorney licensed and admitted to practice law in the State of Nebraska. I am one of the attorneys for Defendants, James D. Pillen et al. in the above-captioned matter. I have personal knowledge of the matters set forth herein.

2. On or about August 13, 2004, Attorney David A. Domina filed his Withdrawal as Counsel for Defendants and Request for Judicial Approval effective immediately.

3. As a result of Mr. Domina's withdrawal, Defendants have retained Woods & Aitken LLP as counsel of record. As newly retained counsel, we request an additional 60 days to become familiar with the facts of the case.

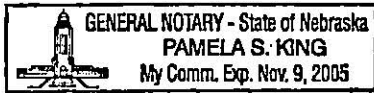
Further Affiant saith not.


Dated this 16th day of August, 2004.



Jeffery T. Peetz

The foregoing instrument was acknowledged before me this 16th day of August, 2004 by Jeffery T. Peetz.





Notary Public

District Court of Boone County, Nebraska

Earl P. and Kathleen M. Stephens, husband and wife; Donald C. and Wanda Loseke, husband and wife; Neal E. and Beverly E. Kemper, husband and wife; Bradley E. and Cindy Stephens, husband and wife; Bill E. and Janice Smith, husband and wife; James and Anna McIntosh, husband and wife; Delmer Keehn; Stanley A. Czarnik; Daniel S. and Dorian Kaspar, husband and wife; and Wendell and Arletta Francis, husband and wife,

Plaintiffs,

v.

James D. Pillen, M & P Land Company, and Beaver Valley Pork, A Nebraska General Partnership; James D. Pillen, Robert L. Gottsch, Brett Gottsch, and Wolbach Foods Partnership, a Nebraska General Partnership; James D. Pillen, James Hemmer, Deborah Rasby, Dan O'Connor, and Northern Plains Partnership, a Nebraska General Partnership; and James D. Pillen, Daniel O'Connor, Deborah Rasby, and PST Northern Nance Partnership, a Nebraska General Partnership,

Defendants.

Case No. CI00-69

FILED IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT BOONE COUNTY, NEBRASKA

AUG 18 2004

ELLEN L. HIRSCH, CLERK

By *Candice J. Snow* Deputy

Order Approving Withdrawal

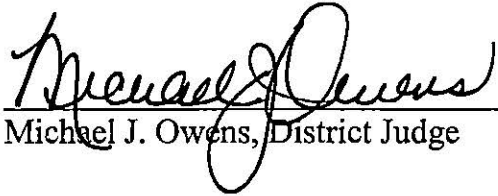
1. This matter is before the Court upon the Withdrawal as Counsel for Defendants and Request for Judicial Approval thereof of David A. Domina and DOMINALAWpc llo.

2. The Court finds and orders that the Withdrawal as Counsel should be and is approved. Defendants are ordered to have their new counsel enter their appearance

and proceed in accordance with the Court's current order scheduling this matter for hearing on August 23, 2004 at 2:30 p.m.

Dated this 17 day of August, 2004.

BY THE COURT:


Michael J. Owens, District Judge

Prepared & Submitted By:

David A. Domina, #11043
Claudia L. Stringfield, #22824
DOMINALAW pc llo
2425 South 144th Street
Omaha, NE 68144-3267
(402) 493-4100

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Ellen L. Hirsch, Clerk of the District Court, Boone County, Nebraska do hereby certify that a copy of the above was sent to Counsel and/or parties in the above entitled case.

8-18-04 c.j.f.
Date Deputy District Court Clerk

David A Domina
Jeffery T Peetz
Patricia A Knapp
Shelley Horak, Esq
Nora M Kane
Anna L Stehlik, Esq

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN STEPHENS,)
Et. Al.,)
)
Plaintiffs,)
)
vs.)
)
JAMES D. PILLEN, Et. Al.,)
)
Defendants.)

CASE NO. CI00-69

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

ORDER

AUG 19 2004

ELLEN L. HIRSCH, CLERK
By *Candice J. Smith* Deputy

This matter comes on this 17th day of August, 2004, upon the Defendants' Motion for Continuance of the hearing on award of damages filed herein.

The Court, being duly advised in the premises, finds that the above-captioned case should be, and hereby is, re-scheduled for hearing on September 24, 2004, at 2:00 p.m., at the **Hamilton County Courthouse in Aurora, Nebraska.**

IT IS SO ORDERED.

BY THE COURT:

Michael J. Brown

DISTRICT JUDGE

pc: Patricia Knapp
Jeff Peetz

CERTIFICATE OF SERVICE

I, Ellen L. Hirsch, Clerk of the District Court, Boone County, Nebraska do hereby certify that a copy of the above was sent to Counsel and/or parties in the above entitled case.

8-19-04 cjf
Date Deputy District Court Clerk

Patricia Knapp
Jeff Peetz

U. S. DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE COMMISSION
WASHINGTON, D. C. 20540
INVESTIGATION OF THE
INTERNATIONAL TRADE SITUATION

INTERNATIONAL TRADE SITUATION

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M. STEPHENS,)
husband and wife; DONALD C. and WANDA)
LOSEKE, husband and wife; NEAL E. and)
BEVERLY E. KEMPER, husband and wife;)
BRADLEY E. and CINDY STEPHENS,)
husband and wife; BILL E. and JANICE SMITH,)
husband and wife; JAMES and ANNA)
MCINTOSH, husband and wife; DELMER)
KEEHN; STANLEY A. CZARNIK; DANIEL S.)
and DORIAN KASPAR, husband and wife;)
and WENDELL and ARLETTA FRANCIS,)
husband and wife,)

Plaintiffs,)

vs.)

JAMES D. PILLEN, M & P LAND COMPANY,)
and BEAVER VALLEY PORK, A Nebraska)
general partnership; JAMES D. PILLEN,)
ROBERT L. GOTTSCH, BRETT GOTTSCH,)
and WOLBACH FOODS PARTNERSHIP, a)
Nebraska general partnership; JAMES D.)
PILLEN, JAMES HEMMER, DEBORAH)
RASBY, DAN O'CONNOR, and NORTHERN)
PLAINS PARTNERSHIP, a Nebraska general)
partnership; and JAMES D. PILLEN, DANIEL)
O'CONNOR, DEBORAH RASBY, and PST)
NORTHERN NANCE PARTNERSHIP, a)
Nebraska general Partnership,)

Defendants.)

CASE NO. CI00-69

ORDER ON DAMAGES

FILED IN THE OFFICE OF THE CLERK OF THE DISTRICT COURT BOONE COUNTY, NEBRASKA

DEC 30 2004

ELLEN L. HIRSCH, CLERK

By Carolyn J. Snow Deputy

THIS MATTER comes on for decision on the issue of damages with respect to eleven of the eighteen plaintiffs who have brought this action. In its original order entered on October 31, 2002, this Court declined to enter an award of damages based upon its conclusion that doing so would be purely speculative.

Stephens et al. v. Pillen, et al.; Case No. CI00-69
Boone County District Court
Order on Damages

Page 2 of 4

On June 15, 2004, the Nebraska Court of Appeals reversed this Court's decision as to the issue of damages and remanded the matter with directions to enter an appropriate damages award to the eleven plaintiffs noted in its opinion. See *Stephens v. Pillen*, 12 Neb. App. 600 (2004). In its opinion, the Court of Appeals noted that general damages do not require specific proof when a court cannot point to any measure of damages by which they are to be assessed except the opinion and judgment of a reasonable person.

On September 24, 2004, further hearing was held regarding the issue of damages. The plaintiffs appeared by Patricia Knapp at such hearing. The defendants were represented by Terry C. Dougherty and Jeffery T. Peetz. Arguments of counsel were presented to the Court and the matter taken under advisement.

In the trial on the merits of this action, few, if any, of the plaintiffs indicated a strong intention to receive an award of damages. Most testified that their primary goal was to alleviate or eliminate the odor that was frequently present in and about their residences. Some of them, most notably Kathleen and Earl Stephens, did present compelling testimony as to the effect that the permeating odor had on their lifestyles. In spite of the general view of the plaintiffs indicating that compensation was not a motivating factor in their involvement in this lawsuit, many of the plaintiffs did present evidence to support an award of general monetary damages. As directed by the Court of Appeals, this Court now endeavors to award an appropriate amount of such damages to the eleven plaintiffs delineated in that court's opinion.

Counsel for the parties, in oral argument presented on September 24, 2004, each referred to prior nuisance cases adjudicated by other courts to support their respective positions. Such a comparative

Stephens et al. v. Pillen, et al.; Case No. CI00-69
Boone County District Court
Order on Damages

Page 3 of 4

analysis is arduous at best due to the obvious difficulties in comparing the relative discomfort, annoyance, and inconvenience in the respective cases cited to the case at bar. Damage awards in the cited cases varied greatly, and the Court must use its own independent judgment in equitably determining the damages required in this case. In doing so, the Court has reviewed the individual testimony of the eleven plaintiffs enumerated by the Court of Appeals, as well as its recollection of the conditions existing at the time of the Court's inspection of the defendants' facilities and the plaintiffs' residences on August 22, 2002.

Based upon the foregoing evidence, the Court finds the damages suffered by the eleven plaintiffs to be as follows:

1. Earl P. Stephens \$10,000.00;
2. Kathleen M. Stephens \$10,000.00;
3. Bradley E. Stephens, \$5,000.00;
4. Cindy Stephens, \$5,000.00;
5. James McIntosh, \$2,500.00;
6. Anna McIntosh, \$2,500.00;
7. Wanda Loseke, \$1,500.00;
8. Wendell Francis, \$1,500.00;
9. Arletta Francis, \$1,500.00;
10. Daniel S. Kaspar, \$1,500.00;
11. Dorian Kaspar, \$1,500.00.

IT IS SO ORDERED.

Stephens et al. v. Pillen, et al.; Case No. CI00-69
Boone County District Court
Order on Damages

Page 4 of 4

BY THE COURT:



DISTRICT JUDGE

pc: Shelley Horak
Patricia Knapp
Terry C. Dougherty
Jeffery T. Peetz

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

EARL P. and KATHLEEN M. STEPHENS,)
husband and wife; DONALD C. and WANDA)
LOSEKE, husband and wife; NEAL E. and)
BEVERLY E. KEMPER, husband and wife;)
BRADLEY E. and CINDY STEPHENS,)
husband and wife; BILL E. and JANICE SMITH,)
husband and wife; JAMES and ANNA)
MCINTOSH, husband and wife; DELMER)
KEEHN; STANLEY A. CZARNIK; DANIEL S.)
and DORIAN KASPAR, husband and wife;)
and WENDELL and ARLETTA FRANCIS,)
husband and wife,)

Plaintiffs,)

vs.)

JAMES D. PILLEN, M & P LAND COMPANY,)
and BEAVER VALLEY PORK, A Nebraska)
general partnership; JAMES D. PILLEN,)
ROBERT L. GOTTSCH, BRETT GOTTSCH,)
and WOLBACH FOODS PARTNERSHIP, a)
Nebraska general partnership; JAMES D.)
PILLEN, JAMES HEMMER, DEBORAH)
RASBY, DAN O'CONNOR, and NORTHERN)
PLAINS PARTNERSHIP, a Nebraska general)
partnership; and JAMES D. PILLEN, DANIEL)
O'CONNOR, DEBORAH RASBY, and PST)
NORTHERN NANCE PARTNERSHIP, a)
Nebraska general Partnership,)

Defendants.)

CASE NO. CI00-69

ORDER
ON DAMAGES

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY NEBRASKA

JAN 03 2005

Ellen L. Hirsch
CLERK OF DISTRICT COURT

THIS MATTER comes on for decision on the issue of damages with respect to eleven of the eighteen plaintiffs who have brought this action. In its original order entered on October 31, 2002, this Court declined to enter an award of damages based upon its conclusion that doing so would be purely speculative.

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analysis is arduous at best due to the obvious difficulties in comparing the relative discomfort, annoyance, and inconvenience in the respective cases cited to the case at bar. Damage awards in the cited cases varied greatly, and the Court must use its own independent judgment in equitably determining the damages required in this case. In doing so, the Court has reviewed the individual testimony of the eleven plaintiffs enumerated by the Court of Appeals, as well as its recollection of the conditions existing at the time of the Court's inspection of the defendants' facilities and the plaintiffs' residences on August 22, 2002.

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1. Earl P. Stephens \$10,000.00;
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5. James McIntosh, \$2,500.00;
6. Anna McIntosh, \$2,500.00;
7. Wanda Loseke, \$1,500.00;
8. Wendell Francis, \$1,500.00;
9. Arletta Francis, \$1,500.00;
10. Daniel S. Kaspar, \$1,500.00;
11. Dorian Kaspar, \$1,500.00.

IT IS SO ORDERED.

Stephens et al. v. Pillen, et al.; Case No. CI00-69
Boone County District Court
Order on Damages

Page 4 of 4

BY THE COURT:



DISTRICT JUDGE

pc: Shelley Horak
Patricia Knapp
Terry C. Dougherty
Jeffery T. Peetz

Lincoln, NE 68508
Ph. (402) 438-8853
Fax (402) 438-0263

and

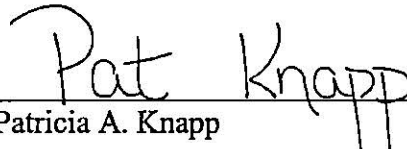
Shelley A. Horak NSBA #19543
Horak & Associates
505 5th Street Suite 500
Sioux City, IA 51101
Ph. (712) 258-1475
Fax (712) 258-1477

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Appeal was served upon the Defendants' attorneys of record by first class United States mail, postage prepaid, on this 21st day of January, 2005, addressed as followed:

Terry C. Dougherty, Esq.
Jeffery T. Peetz, Esq.
Woods & Aitken, LLP
301 S. 13th Street Suite 500
Lincoln, NE 68508



Patricia A. Knapp

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

CASE NO. CI 00-69

EARL P. and KATHLEEN M. STEPHENS,
Husband and wife; DONALD C. and WANDA
LOSEKE, husband and wife; NEAL E. and
BEVERLY E. KEMPER, husband and wife;
BRADLEY E. and CINDY STEPHENS,
Husband and wife; BILL E. and JANICE SMITH,
Husband and wife; JAMES and ANNA
MCINTOSH, husband and wife; DELMER
KEEHN; STANLEY A. CXARNIK; DANIEL S.
And DORIAN KASPAR, husband and wife;
And WENDELL and ARLETTA FRANCIS,
Husband and wife,

Plaintiffs/Appellants,

Vs.

JAMES D. PILLEN, M & P LAND COMPANY,
and BEAVER VALLEY PORK, A Nebraska
general partnership; JAMES E. PILLEN,
ROBERT L. GOTTSCHE, BRETT GOTTSCHE,
And WOLBACH FOODS PARTNERSHIP, a
Nebraska general partnership; JAMES D.
PILLEN, JAMES HEMMER, DEBORAH
RASBY, DAN O'CONNOR, and NORTHERN
PLAINS PARTNERSHIP, a Nebraska general
Partnership; and JAMES D. PILLEN, DANIEL
O'CONNOR, DEBORAH RASBY, and PST
NORTHERN NANCE PARTNERSHIP, a
Nebraska general Partnership,

Defendants/Appellees.

Patricia A. Knapp NSBA #17718
941 "O Street Suite 105
Lincoln, NE 68508

and

Shelly A. Horak NSBA #19543
505 5th Street Suite 500
Sioux City, IA 511101

Jeffrey T Peetz, #17386
301 S 13th Street Suite 500
Lincoln, NE 68508

and

Terry C. Dougherty, #11064
301 S 13th Street Suite 500
Lincoln, NE 68508

I certify that the attached are true and accurate copies of the pleadings filed in the above-captioned case.

This is a Civil Law case originating in the District Court.

Notice of Appeal Directed to: **Court of Appeals**

The Notice of Appeal was filed on **Friday, January 28, 2005.**

The statutory docket fee and legal services fees were paid on: January 28, 2005

240

Cost bond was posted January 28, 2005 in the amount of \$75.00.

The following motions have been filed:

- Motion for new trial. Date Filed _____, Date Disposed of _____.
- Motion to alter or amend judgment. Date filed: _____ Date Disposed of _____.
- Motion to set aside verdict or judgment. Date filed _____. Date disposed of _____.
- None of the above motions have been filed.

Date: January 28, 2005.

Ellen L. Hirsch
Clerk of the District Court,



Attached Pleadings:
Notice of Appeal



CLERK -- THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
2413 State Capitol Building, P.O. Box 98910
Lincoln, Nebraska 68509
(402) 471-3731
FAX (402) 471-3480

Lanet S. Asmussen
Clerk
Janice J. Culver
Deputy Clerk
Pamela J. Kraus
Jill R. Machacek
Appellate Clerks
Judy A. Roussan
Lori D. Oliveros
Bailiffs

January 31, 2005

Boone County District Court
222 S. 4th Street
Albion, NE 68620

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

FEB 02 2005

Case Caption: Stephens v. Pillen
Court of Appeals No: A-05-000121
Trial Court No: CI00-69

ELLEN L. HIRSCH, CLERK
By *Carolyn J. Irwin* Deputy

Dear Clerk:

We have received and filed the certified copy of notice of appeal in the above-captioned case. Please record the Court of Appeals number and use it on all future correspondence and filings.

Very truly yours,

Lanet S. Asmussen

Lanet S. Asmussen
Clerk

LSA:pjk

ELLEN L. HIRSCH
BOONE COUNTY
CLERK OF THE DISTRICT COURT
COURT HOUSE
222 So. 4th St.
Albion, NE 68620
Phone (402) 395-2057 | Fax (402) 395-6592

Michael J. Owens, Judge

Carolyn J. Fross, Deputy Clerk

June 28, 2006

Clerk of the Nebraska Supreme Court and Court of Appeals
2413 State Capitol Building
Lincoln, NE 68509

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JUL 03 2006

ELLEN L. HIRSCH, CLERK
By Carolyn J. Fross Deputy

Re: Stephens vs. Pillen
Trial Court No. CI00-69
Court of Appeals No. A-05-000121

Dear Clerk:

Please find enclosed the Bill of Exception in the above entitled case, consisting of Volume 1 thru 6. The two boxes of exhibits have already been sent to your office.

Thank you.

Sincerely,

Ellen L. Hirsch
Clerk of the District Court

Received on June 30, 2006

Jamie A. Amussen

RECEIVED

JUN 30 2006

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

OPINION OF THE NEBRASKA COURT OF APPEALS

(Not Designated for Permanent Publication)

Case Title

EARL P. AND KATHLEEN M. STEPHENS, HUSBAND AND WIFE, ET AL., APPELLANTS,
V.
JAMES D. PILLEN ET AL., APPELLEES.

Case Caption

STEPHENS V. PILLEN

Filed October 3, 2006. No. A-05-121.

Appeal from the District Court for Boone County: MICHAEL OWENS, Judge.
Affirmed.

Patricia A. Knapp and Shelley A. Horak for appellants.

Terry C. Dougherty and Jeffery T. Peetz, of Woods & Aitken, L.L.P., for appellees.

STEPHENS V. PILLEN

Filed October 3, 2006. No. A-05-121.

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Earl P. Stephens, Kathleen M. Stephens, and nine other individuals (collectively Appellants) appeal the judgment on damages issued by the district court for Boone County in a private nuisance case. Because the district court determined what amount to award the Appellants by considering proper factors, demonstrated by the Appellants' trial testimony, and because the damages are within the range of the evidence and are not arbitrary, we affirm.

BACKGROUND

This is the second appearance of this case before this court. In *Stephens v. Pillen*, 12 Neb. App. 600, 681 N.W.2d 59 (2004) (*Stephens I*), we affirmed the district court's determination of liability against James D. Pillen and various other defendants (Appellees), but reversed in part as to damages. We first briefly discuss the decision rendered in *Stephens I*, and then summarize additional facts pertinent to the issue presently before this court.

The Appellees operate four hog confinement facilities in close proximity to the Appellants' residences. The Appellants and seven other neighboring landowners sued the Appellees, claiming that the odor from the facilities created a nuisance. The district court held that the Appellees' facilities constituted a nuisance and ordered the Appellees to either abate the nuisance or cease operating the facilities that created the nuisance. However, the district court awarded no monetary damages. On appeal, the Appellants and the other neighboring landowners challenged the denial of monetary damages. The Appellees filed a cross-appeal, challenging the district court's determination that their facilities constituted a nuisance.

In *Stephens I*, we upheld the district court's determination that the Appellees' hog confinement facilities constituted a nuisance. We also affirmed the district court's denial of monetary damages to the other neighboring landowners. However, we reversed the denial of monetary damages to the Appellants--Earl Stephens, Kathleen Stephens, Bradley E. Stephens, Cindy Stephens, Wendell Francis, Arletta Francis, James McIntosh, Anna McIntosh, Dorian Kaspar, Daniel S. Kaspar, and Wanda Loseke. In doing so, we stated:

The [Appellants] all presented sufficient testimony to establish significant damage to their way of life and their quality of life as a result of the nuisance in this case. They variously testified about significant interferences with their abilities to use and enjoy their homes and yards, including hanging laundry on the clothesline, spending time outside with children and grandchildren, opening their windows to enjoy fresh air, and generally enjoying time outside. They variously testified that they are forced to make sure that windows and doors to their homes are closed at all times so that the odor does not invade the inside of their homes. Some of them testified that they had air conditioning and used it to keep their homes cool when the windows were shut. Kathleen Stephens identified herself as a "prisoner" in her own home and testified that she could not even eat things grown in her own garden because they had been "out in that smell" and thus

were unappetizing as a result of the hog confinement facilities. Earl Stephens testified that he and Kathleen Stephens were considering moving and leaving land that had been in his family for years. James McIntosh testified that as a result of the odors, his family no longer plans any outdoor activities. Wanda Loseke testified that she has to put "mentholatum" in her nose to be able to tolerate sitting on her porch to read. The [Appellants] all presented sufficient similar testimony to establish that they have suffered compensable general damages as a result of the nuisance.

Although many of the [Appellants] testified that they could not put a specific monetary value on these damages, none of them testified that he or she actually did not want compensation for such damages. . . . As a result, we reverse the order of the district court denying monetary damages to [the Appellants] and remand the matter to the district court with directions to award appropriate monetary damages to each of them, considering the extent of interference demonstrated by their testimony.

Stephens I, 12 Neb. App. at 608-09, 681 N.W.2d at 67.

On remand, the district court reconsidered the Appellants' original trial testimony, and the court's contemporaneous observations upon inspection of the area, and heard additional arguments of counsel on the issue of damages. The district court awarded damages as follows: \$10,000 each to Earl Stephens and Kathleen Stephens, \$5,000 each to Bradley Stephens and Cindy Stephens, \$2,500 each to James McIntosh and Anna McIntosh, and \$1,500 each to the remaining Appellants. The Appellants now seek review of the district court's judgment on remand.

ASSIGNMENT OF ERROR

The Appellants allege that the damages awarded by the district court are insufficient to compensate them for their damages and are clearly erroneous.

STANDARD OF REVIEW

In an appeal of an equity action, an appellate court tries factual questions de novo on the record and reaches a conclusion independent of the findings of the trial court, provided, when credible evidence is in conflict on a material issue of fact, the appellate court considers and may give weight to the fact that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another. *Goetze v. National Farms, Inc.*, 245 Neb. 262, 512 N.W.2d 626 (1994). When questions of fact involve the assessment of money damages, an appellate court will not set aside such judgment if it is within the range of the evidence and is not arbitrary. *Id.*

ANALYSIS

The Appellants claim that the damages they were awarded by the district court on remand are insufficient. They assert three arguments to support their claim. First, the Appellants argue that the district court erred by minimizing their damages because they did not claim avarice as the motivating factor for bringing the lawsuit. Second, they argue that the district court erred when it awarded them damages at the low end of the range of damages which they argue has been established for private nuisance cases. Third, throughout their brief, they make the general argument that the damages awarded are insufficient because the damages do not fully compensate them for their losses. We examine each argument in turn.

The record in this case does not support the Appellants' first argument. They argue that the district court committed clear error by "minimiz[ing their] damages because they did not claim avarice as the motivating factor for their lawsuit." Brief for appellants at 9. However, in its judgment on damages, the district court stated, "In spite of the general view of the [Appellants] indicating that compensation was not a motivating factor in their involvement in this lawsuit, many of the [Appellants] did present evidence to support an award of general monetary damages." The district court then "endeavor[ed] to award an appropriate amount of such damages." While the court recognized that a desire for compensation did not motivate the Appellants to bring their lawsuit, nothing in the record links that observation to a minimization of damages.

We also find that the Appellants' second argument is without merit. They assert that "it was clear error for the district court to peg the damages in this case to the *Thomsen* end of the scale." Brief for appellants at 9. In *Thomsen v. Greve*, 4 Neb. App. 742; 550 N.W.2d 49 (1996), this court modified the award of damages to \$4,000 for the victims of an intentional nuisance. The Appellants argue that their harm is much greater than the harm suffered by the victims of the nuisance in *Thomsen*. They argue, based on their analysis of Nebraska cases, that the range of damages for private nuisance cases is \$4,000 to \$375,000 and that they are entitled to an award closer to \$375,000 than \$4,000. We reject the underlying premise of this argument.

An appropriate amount of damages for a case cannot be ascertained by simply looking at damages awarded in other nuisance cases and attempting to determine how the instant case does or does not differ from the other cases. The facts of each case must be independently examined to ascertain the appropriate measure of damages.

In conjunction with their second argument, the Appellants request that this court "take the task upon itself to award an appropriate amount of damages [to the Appellants]." Brief for appellants at 9. We decline to undertake this task for two reasons. First, we do not agree with the Appellants that the district court erred when it did not base its award of damages on amounts awarded in similar cases. Second, we disagree that the circumstances of the instant case require that we do so. We are mindful that the standard of review applicable in reviewing questions of fact is *de novo*. However, as we have already noted above, when questions of fact involve the assessment of money damages, an appellate court will not set aside such judgment if it is within the range of the evidence and is not arbitrary. *Goeke v. National Farms, Inc.*, 245 Neb. 262, 512 N.W.2d 626 (1994).

This leads to our consideration of the Appellants' more general argument, that the awarded damages are inadequate, which we also reject. In *Stephens I*, we directed the district court to "award appropriate [general] monetary damages to [the Appellants], considering the extent of interference demonstrated by their testimony." 12 Neb. App. at 609, 681 N.W.2d at 67. We recognized in *Stephens I* that "[b]y definition, the very nature of general damages is such that a court cannot point out any measure of damages for things such as discomfort, annoyance, or inconvenience." 12 Neb. App. at 608, 681 N.W.2d at 66. In this type of case, there is no method which permits a precise determination of the damages. *Gee v. Dinsdale Bros., Inc.*, 207 Neb. 224, 298 N.W.2d 147 (1980). It was thus the district court's duty to look at the facts and award damages that were, in its opinion, warranted by those facts.

The district court stated in its judgment that it awarded damages based in part on its recollection of the conditions at the Appellants' residences and the Appellees' facilities during a court inspection and in part on the Appellants' trial testimony. While the district court did not give a detailed account of its rationale for awarding the specific amounts that it did, an examination

of the Appellants' testimony shows that the Appellants who suffered greater interferences from the nuisance in this case were awarded more damages.

For example, Earl Stephens and Kathleen Stephens were awarded the highest recoveries, followed by Bradley Stephens and Cindy Stephens. The district court noted that Earl Stephens and Kathleen Stephens most notably presented "compelling testimony as to the effect that the permeating odor had on their lifestyles." Their testimony demonstrates that the Appellees' hog facilities have affected their lives on a significant number of days and have severely limited their outdoor activities. Both testified that they no longer sit on their porch or hang clothes outside to dry. Earl Stephens testified that at times, the odor is so strong his eyes water, and that on one occasion, his neighbor sprayed hog waste from the Appellees' facilities out of the neighbor's center pivot, causing a terrible odor at the farm of Earl Stephens and Kathleen Stephens and discoloring their patio furniture. Earl Stephens also testified that because of the odor, his grandchildren do not play outside his home as often as they did in the past. Kathleen Stephens testified that she no longer goes on walks, rarely works in her yard, and has not opened the windows in her home for years because of the odor.

Bradley Stephens testified that because of the odor from the hog facilities, his family does not spend much time outside and he keeps the windows in his home closed. However, he also testified that the odor has not stopped him from working outside. Cindy Stephens testified that the odor has kept her from hanging most of her family's clothes outside to dry and that the odor has limited the amount of time her children play outside.

The district court awarded less to those Appellants who did not demonstrate that the odor affected their lives to the extent that it affected the lives of Earl Stephens, Kathleen Stephens, Bradley Stephens, and Cindy Stephens. James McIntosh and Anna McIntosh were each awarded \$2,500. James McIntosh testified that the odor does not affect his life in any way except that he no longer sits on his patio and no longer plans outdoor activities. Anna McIntosh testified that while she has not changed her outdoor activities because of the odor, the odor has kept her from hanging laundry outside to dry and from opening the windows in her home.

The district court awarded the smallest amounts to Wanda Loseke, Wendell Francis, Arletta Francis, Daniel Kaspar, and Dorian Kaspar. The testimony given by these five Appellants shows that they were least affected by the odor. Wanda Loseke testified that she spends approximately 7 months each year in Arizona. She testified that when she is at her home, she keeps the windows closed the majority of the time and does not enjoy sitting on her porch as much as she did in the past.

Wendell Francis testified that he can smell the odor at his home "probably once every couple weeks when it's in the spring and the fall," but did not offer any explanation of how the odor has interfered with any of his activities at home. Arletta Francis testified that she normally does not open the windows in her home or hang clothes outside to dry. She also no longer enjoys gardening outside, and her two grandchildren no longer play outside when they can smell the hog facilities.

Dorian Kaspar testified that both she and her husband, Daniel Kaspar, are away from their home during the day for extended hours. When she is at home, she still goes outside to work in her yard and garden, but she does not go outside for relaxation and enjoyment when she can smell the hogs. Daniel Kaspar testified that the odor has not limited the amount of time he spends outside, but he just does not enjoy his time outside as much as he did in the past.

The testimony summarized above demonstrates that the Appellants who received the highest awards testified that the odor prevented them from engaging in many outdoor activities. To the contrary, those Appellants who engaged in the same outdoor activities after the hog facilities went into operation as they did in the past received less compensation. This pattern shows that the district court did not award damages arbitrarily, but awarded damages reflecting the respective levels of harm shown by the evidence.

In *Goeke v. National Farms, Inc.*, 245 Neb. 262, 512 N.W.2d 626 (1994), an action in equity where the Nebraska Supreme Court reviewed the district court's judgment de novo, the court nonetheless applied the rule that with regard to excessive verdicts, a verdict will not be set aside on appeal unless it is so clearly exorbitant as to indicate that it was the result of passion, prejudice, or mistake, or it is clear that the trier of fact disregarded the evidence or rules of law. In actions at law, the Nebraska Supreme Court has applied an equivalent rule concerning claims of inadequate verdicts. See, e.g., *Brandon v. County of Richardson*, 264 Neb. 1020, 653 N.W.2d 829 (2002) (award of damages may be set aside as inadequate when, and not unless, it is so inadequate as to be result of passion, prejudice, mistake, or some other means not apparent in record).

In the case before us, we acknowledge our de novo review. The district court had to value the Appellants' loss associated with the inconvenience and annoyance of living with odor from the hog facilities. As we noted previously, there is no precise formula to use when awarding damages in a case such as this one. We conclude that the damages awarded by the district court are within the range of the evidence and are not arbitrary.

CONCLUSION

For the foregoing reasons, we reject the Appellants' arguments that the damages awarded by the district court are insufficient. We affirm the judgment of the district court.

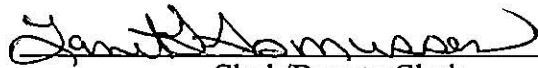
AFFIRMED.

THE STATE OF NEBRASKA, ss.

I hereby certify that I have compared the foregoing copy of an opinion filed by this Court with the original on file in my office and that the same is a correct copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of this Court, in the City of Lincoln.




Clerk/Deputy Clerk

COURT OF APPEALS NO.	A-05-121
TRIAL TRIBUNAL NO.	CI00-69
DATE OPINION FILED	October 3, 2006
DATE OPINION CERTIFIED	October 3, 2006

Date: November 7, 2006

NEBRASKA COURT OF APPEALS MANDATE

To: Boone County District Court, Nebraska

WHEREAS, in a late action in your court, captioned:

Stephens v. Pillen

you rendered judgment.

And, WHEREAS, plaintiff Earl P. Stephens prosecuted an appeal to this court.

ON CONSIDERATION WHEREOF, the judgment which you rendered has been affirmed by the Court of Appeals.

NOW, THEREFORE, you shall, without delay, proceed to enter judgment in conformity with the judgment and opinion of this court.

Costs of this appeal are to be paid by appellant and are taxed at \$66.50.

WITNESS the Honorable Everett O. Inbody, Chief Judge, and the seal of this court.



Lanet S. Asmussen
Clerk, Court of Appeals

Jan Culver
Deputy Clerk

Court of Appeals No.

A-05-000121

Trial Tribunal No.

CI00-69

Date Opinion Issued

10/03/06

COSTS IN THE COURT OF APPEALS

Table with 2 columns: Description of costs and Amount. Includes items like 'Cost Due Clerk, Court of Appeals', 'Automation Fee Paid', and 'Total Cost'.

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA NOV 16 2006

EARL P. STEPHENS, Et. Al.,)
)
Plaintiffs,)
)
vs.)
)
JAMES D. PILLEN, Et. Al.,)
)
Defendants.)

CASE NO. CI00-05
ELLEN L. HIRSCH BY CAROLYN J. FROSS, DEPUTY
Carolyn J. Fross

JUDGMENT ON MANDATE

WHEREAS, this Court previously entered a judgment on January 3, 2005; and

WHEREAS, the defendant then perfected and prosecuted an appeal to the Nebraska Court of Appeals wherein said appeal was docketed as A-05-000121; and

WHEREAS, the Nebraska Court of Appeals has ruled that the judgment entered by this Court has been affirmed. The costs of this appeal are to be paid by Appellant Earl P. Stephens, and are taxed in the amount of \$66.50.

NOW, THEREFORE, IT IS ORDERED that the mandate of the Nebraska Court of Appeals dated November 7, 2006, be set forth upon the records of the District Court of Boone County, Nebraska, affirming the judgment previously entered by this Court. The costs in the amount of \$66.50 shall be taxed to Appellant Earl P. Stephens as set forth in the mandate.

BY THE COURT:

CERTIFICATE OF SERVICE

I, Ellen L. Hirsch, Clerk of the District Court, Boone County, Nebraska do hereby certify that a copy of the above was sent to Counsel and/or parties in the above entitled case.

11-16-06 cjf
Date Deputy District Court Clerk

Patricia A Knapp
Jeffery T Peetz

Michael J. Deeser
DISTRICT JUDGE