

IN THE IOWA DISTRICT COURT FOR WAPELLO COUNTY

DOUG PAULS, et al.,
Plaintiffs,

No. LALA 105144
(Division C)

v.

JBS LIVE PORK, LLC (*f/k/a CARGILL PORK, LLC*),
Defendant.

ORDER ON MOTION FOR RECONSIDERATION
and
ORDER ON MOTION TO ENLARGE AND AMEND

On April 20, 2016 the court issued its Order on Post-Verdict Motions and Judgment Entry, prompting the filing of supplemental motions by the parties:

--JBS Live Pork's May 2nd Rule 1.904(2) Motion to Enlarge and Amend (as resisted by the bellwether plaintiffs); and

--Division C bellwether plaintiffs' May 5th Motion to Reconsider (as resisted by JBS).

The issues raised in the pleading streams are now deemed submitted for ruling, on pleadings and without oral argument. The court, taking judicial notice of the trial record and file contents, and applying relevant Iowa law, now rules on the pending motions.

THE COURT DIRECTS THE FOLLOWING.

1. Bellwether Plaintiffs' Motion to Reconsider

- A.** No basis is presented for the court to reconsider and change any of its rulings in the April 20, 2016 Order on Post-Verdict Motions and Judgment Entry; the plaintiffs' Motion to Reconsider is denied.
- B.** It bears mention that, notwithstanding counsel's legal arguments to the contrary, JBS's defense of claims in the Division C bellwether has been pursuant to the framework and content of Iowa Code Section 657.11.
 - 1)** While JBS continues to take exception to the court's declaratory ruling that immunity as applied through the first sentence of Section 657.11 (2) is unconstitutional, JBS defense under the immunity provision has been pursued throughout this bellwether case, and the pleading and trial record is replete with JBS's preservation of its claimed defense of immunity (and its claim of court error).

- 2) Also, JBS defended Division C bellwether claims under the exception to immunity featured in the second sentence of Section 657.11, in particular subsection b. (subsection a. was ordered inapplicable on the factual stipulations of the parties).
 - 3) The court acknowledges a JBS argument at hearing on April 12, 2016 that a right of recovery under Section 657.11 (5) for defense of frivolous claims is forestalled—unless the court reverses its January 9, 2016 declaration of the unconstitutionality of statutory immunity. The court, however, proceeds to base its implementation of Section 657.11 (5) on the record of the facts and law of this bellwether case, as tried. The court deems the JBS argument in the hearing record to have been made in pursuit of alternative strategies of relief, and to assure preservation of allegations of court error.
- C. The court in its April 20th Order on Post-Verdict Motions and Judgment Entry properly addressed frivolous claims after a trial resolution of the bellwether case. The survival of those frivolous claims through dispositive-motion practice does not pre-empt scrutiny under Section 657.11 (5). Indeed, Section 657.11 (5) specifically contemplates that case resolution will have occurred before the issue of frivolous claims is taken up.

“ . . . [A] person who *brings* the [frivolous] claim as part of a *losing cause of action* . . . shall be liable to the person against whom the action was brought *for all costs and expenses incurred in the defense of the action.*” [emphasis added]

The litigation sequence—a) pleading the claim, b) discovery on the claim, c) trial or other court evaluation of the claim, d) loss of the claim, followed by e) scrutiny of the claim for being frivolous—is not only within the statute’s requirements, but is consistent with the protocol of analysis seen in other frivolous-litigation analysis, such as in cases where relief is sought under Iowa Rule of Civil Procedure 1.413 and/or Iowa Code Section 619.19. *See Barnhill v. Iowa District Court for Polk County*, 765 N.W.2d 267, 272-73 (Iowa 2009) (citing *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989) (analysis applied to case resolution through summary judgment).

2. JBS Motion to Enlarge and Amend

Pursuant to Iowa Code Section 657.11 (5) and the law of this case holding that the claims of Rod Miller, Bonita Miller, and David Bowen were frivolous, JBS’s

request for quantification of its costs and expenses¹ and for equitable apportionment to those affected plaintiffs, is granted.

A. The April 20, 2016 Judgment Entry, Section II. C. is enlarged and amended to reflect the following declaratory ruling, and supplemental entry of judgment.

B. JBS has demonstrated that it sustained and paid reasonable and necessary costs and expenses of defense totaling \$101,447.33, as itemized in the pleading record,² and further detailed in Motion Exhibits:

A Deposition expense on Martin examination	\$655.20
B Deposition expense on Kildow examination	300.00
C Copy, printing, and shipping of trial materials	4,241.98
Transcription of trial proceedings ³	4,755.75
Trial supplies	196.97
D Lodging, room rental during trial	10,777.20
Use of secure shred bins	905.94
Equipment rental	9,445.73
Trial technician services	17,640.00
Mileage ⁴	1,492.56
E Stanley Consultants data collection, expert report compilation, and exhibit preparation.	51,036.00

C. In analyzing the meaning of Section 657.11 (5)'s "all costs and expenses incurred in the defense of the action" the court properly factors the purposes to be served by enactment of the entirety of Section 657.11. Claimed expenses need not fall into the category of statutorily-assessable court costs under Iowa Code Chapter 625.

D. It is equitable and appropriate to apportion JBS litigation costs and expenses of \$101,520.13 under Section 657.11 (5) as all the bellwether plaintiffs' respective interests appeared at the Division C bellwether trial. It is fair, particularly given the bellwether nature of the case tried, to prorate the

¹ The JBS accounting of expenses does not contain attorney fees incurred in defense of Division C bellwether claims, due to the court's April 20, 2016 Order on Post-Verdict Motions and Judgment Entry that denied recovery of such fees under the terms of Iowa Code Section 657.11 (5) and prevailing Iowa law.

² The pleading record supports a total of \$101,447.33 in defense costs and expenses. (The \$72.80 difference from the JBS request of \$101,520.13 represents a court finding of expenses of \$655.20 under JBS Brief Exhibit A, and \$300 under Brief Exhibit B.)

³ These transcription expenses also may qualify for assessment of costs under Iowa Code Section 625.9.

⁴ There is no accounting of the mileage total that is claimed; this expense finding and the award on it, are subject to JBS's certification of a mileage accounting by June 16, 2016.

plaintiffs' respective responsibility on a per-capita basis, resulting in these shares for those bringing frivolous claims:

- 1) One-ninth, \$11,280.01, to Rod Miller;
- 2) One-ninth, \$11,280.01 to Bonita Miller; and
- 3) One-ninth, \$11,280.01 to David Bowen.

E. Supplemental judgment now enters against the foregoing plaintiffs, in the amounts directed above, so as to implement the directive of Iowa Code Section 657.11 (5).

F. In consideration of JBS's request for a proration of recovery, the court does not aggregate the per-capita amounts of defense costs and expenses and does not impose joint and several liability on this supplemental judgment entry.

JUDGMENT IS ENTERED ACCORDINGLY, JUNE 2, 2016.

Directions for Service

Service shall be completed upon all LALA 105144 parties by email.

Copies: David E. Sykes, attorney for plaintiffs
Andrew R. Klonowski, attorney for plaintiffs
Charles D. Miller, attorney for plaintiffs
Charles F. Speer, attorney for plaintiffs
Peter Britton Bieri, attorney *pro hac vice* for plaintiffs
Richard H. Middleton, attorney *pro hac vice* for plaintiffs
William H. Roerman, attorney for Valley View
Gerald T. Sullivan, attorney for Valley View
Gayla R. Harrison, attorney for Warren and Warren Family Pork
Nicholas T. Maxwell, attorney for Warren and Warren Family Pork
Jacob D. Bylund, attorney for JBS Live Pork, LLC
Scott L. Halbur, attorney for JBS Live Pork, LLC
Shannon L. Sole, attorney for JBS Live Pork, LLC
Christopher H. Dolan, attorney *pro hac vice* for JBS Live Pork, LLC
Evelyn Thomann/Steffanie Swartz, case coordinator
Andrew Grove, media coordinator



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
LALA105144 DOVICO JERRY VS VALLEY VIEW SWINE LLC ETAL

So Ordered

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Annette J. Scieszinski, District Court Judge,
Eighth Judicial District of Iowa