

IN THE IOWA DISTRICT COURT FOR WAPELLO COUNTY

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**DOUG PAULS, et al.,**  
**Plaintiffs,**

**No. LALA 105144**  
**(Division C)**

v.

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

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**ORDER ON POST-VERDICT MOTIONS**  
**AND JUDGMENT ENTRY**

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On April 12, 2016 the court held hearing on the post-verdict motions, in preparation for entry of judgment on the February 29<sup>th</sup> jury verdicts. These attorneys participated:

--Division C bellwether plaintiffs<sup>1</sup> were represented by David E. Sykes, Charles D. Miller, and Andrew R. Klonowski; and

--JBS Live Pork, LLC was represented by Jacob D. Bylund.

During the course of hearing, the court entered partial ruling, and took all other issues under study. Now, in application of Iowa law to the parties' respective claims, the court declares ruling on post-verdict issues and proceeds to enter judgment on the jury verdicts.

**THE COURT DIRECTS THE FOLLOWING.**

**I. Declaratory Ruling on Costs and Expenses**

**A. Costs and Expenses Generally**

Under Iowa Code Section 625.1, *et seq.* a successful litigant is entitled to recover costs advanced, including but not limited to expenses associated with discovery and perpetuation depositions that were offered in any manner as trial evidence, and/or were referenced as evidence or for legal argument during pretrial and trial pleading practice and hearings outside the presence of the jury factfinder.

**B. Apportionment Among Conjoined Cases**

Under the unique circumstances of efficient conjoiner of case preparation in Wapello County LALA105144 (Divisions A and C) and Poweshiek County

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<sup>1</sup> This ruling addresses post-trial motions in Division C as pertaining to interests involving bellwether-plaintiff claims. Remaining plaintiff claims under Division C are in abeyance while trial and post-trial process proceeds on the bellwether claims.

LALA002187, the costs and expenses<sup>2</sup> to be recoverable pursuant to the Division C bellwether verdicts obtained February 29, 2016 should be computed fairly under Iowa Code Section 625.14, considering the amount of deposition preparation necessary for the tried case and the bellwether purpose of the trial. A fair apportionment follows.

Nina Pauls (Division C bellwether plaintiff, 100 %)	\$1,482.04
Doug Pauls (Division C bellwether plaintiff, 100 %)	\$1,183.10
L.W. (Division C bellwether plaintiff, 100 %)	\$ 593.80
Ardath Teeter—video (Division C bellwether plaintiff, 100 %)	\$ 735.00
Sharon Chance (Division C bellwether plaintiff, 100 %)	\$ 959.74
Richard Chance (Division C bellwether plaintiff, 100 %)	\$1,378.46
Bonita Miller (Division C bellwether plaintiff, 100 %)	\$1,278.76
Rod Miller (Division C bellwether plaintiff, 100 %)	\$1,458.44
David Bowen (Division C bellwether plaintiff, 100 %)	\$1,162.78
Art Halstead (all cases, all plaintiffs; 66.67% of \$671.00)	\$ 447.36 <sup>3</sup>
Jeff Worstell (all cases, all plaintiffs; 66.67% of \$642.75)	\$ 428.52 <sup>4</sup>
Kathy Martin (all cases, all plaintiffs; 66.67% of 4,044.10)	\$2,696.20 <sup>5</sup>
Dr. Cheremisinoff (all cases, all plaintiffs; 66.67% of \$1,533.50)	\$1,022.38 <sup>6</sup>
Total	\$14,826.58.

**C. JBS Live Pork, LLC Motion for Costs and Expenses**

- 1) As a matter of law and as tried in fact, the Division C bellwether claims required JBS Live Pork to raise a defense under Iowa Code Section 657.11 titled, “Animal feeding operations.”<sup>7</sup>

<sup>2</sup> In JBS’s March 15, 2016 Bill of Costs, the defendant does not demand recovery of the gross amount of its deposition expenses confirmed in vouchers. Rather, the claim reflects deduction of certain billed-and-paid videography-related charges for depositions which were not utilized at trial in video format. The plaintiffs raise no objection to the reasonableness of expenses claimed; however, the plaintiffs do resist recovery of deposition expenses for witnesses whose depositions were not the source of trial evidence produced for jury consideration.

<sup>3</sup> The court deems approximately half of the Halstead deposition to be attributable to general background applicable to all cases with 2016 trial assignments; and the remaining half applies, respectively, one-third to LALA105144 Division C (Warren barns), one-third to Division A (Adam barns), and one-third to Poweshiek LALA002187. The general portion and the Division C portion were fully necessary to try Division C bellwether claims, making 66.67 percent of Halstead deposition expenses incurred and claimed by JBS properly accountable here ( $100\% / 6 = 16.67\% \times 4 = 66.67\%$ ).

<sup>4</sup> The court deems the formula applied in prorating Halstead deposition expenses to apply, as well, to the Worstell deposition expense.

<sup>5</sup> The court deems the formula applied in prorating Halstead and Worstell deposition expenses to apply, as well, to the Martin deposition expense.

<sup>6</sup> The court deems the formula applied in prorating Halstead, Worstell, and Martin deposition expenses to apply, as well, to the Cheremisinoff deposition expense.

<sup>7</sup> In oral argument, JBS requested reconsideration of the court’s ruling that declared the immunity for confined animal feeding operations (CAFOs) set forth in Iowa Code Section 657.11 (2) to be unconstitutional as applied to the bellwether plaintiffs. The court finds no basis to reconsider the ruling. For reasons cited in JBS briefing, the provisions of Section 657.11 (5) are severable, and those provisions are unaffected by the unconstitutionality ruling as to immunity; Section 657.11 (5) is properly applied to post-verdict motions.

- 2) For all the reasons identified in the pleading and hearing record, including the complete trial record, the claims of plaintiffs Rod and Bonita Miller and David Bowen have been shown to have been frivolous, triggering JBS's right to recover from those plaintiffs "all costs and expenses incurred in the defense of [those claims]" under Section 657.11 (5).
- 3) JBS's recovery embraces court costs and expenses otherwise properly assessed under Section 625.1, *et seq.*, including but not limited to discovery and perpetuation depositions that were offered in any manner as trial evidence, and/or were referenced as evidence or for legal argument during pretrial and trial pleading practice and hearings outside the presence of the jury factfinder. (See accounting of deposition expenses for trial of the Division C bellwether case, above, and which is incorporated by this reference.)
- 4) However, Iowa law does not permit JBS to recover attorney fees generated in defense of the frivolous bellwether claims. In determining whether attorney fees, fall within the parameters of Section 657.11 (5)'s "all costs and expenses," the court considers several factors.

--In looking at the ambiguity, the court properly considers factors set out in Section 4.6, including but not limited to, the object sought to be attained by the statute, the consequences of the construction urged by JBS, and the statement of policy contained within Section 657.11 (1).

--Yet, the court is persuaded that a legislature's intent is expressed by omission, as well as inclusion of language. *Wiebenga v. Iowa Dep't of Transp.*, 530 N.W.2d 732, 735 (Iowa 1995) (internal quotation and citation omitted). The fact that the term "attorney fees" was not included in Section 657.11 (5) but was included in a previously-enacted and similar statute, Section 352.11 (1) (d), reinforces the principle: the legislature knew how to specify a right of recovery for attorney fees, but it chose not to do it in Section 657.11 (5).

--In this case, the general rule applies: subject to exception for circumstances in which a losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, JBS has no claim for attorney fees in the absence of a statute or contract allowing such an award. *See Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993).

--The court's finding that the claims of Rod and Bonita Miller and David Bowen were frivolous, confirms that they were—as Merriam-Webster's Dictionary would define the term "frivolous"—of the nature to be of "of little weight or importance" or "having no sound basis" or "lacking in seriousness." This finding does not establish that the

Miller and Bowen claims were undertaken “in bad faith, vexatiously, wantonly, or for oppressive reasons.” *See id.* Thus, JBS does not have a right under the common law to recovery attorney fees in this case.

## II. Judgment Entry

### A. Dismissal of Bellwether Claims

Jury verdicts that found no nuisance to have been proven by bellwether plaintiffs, are now confirmed: all Division C claims against JBS Live Pork, LLC as brought by Doug Pauls, Nina Pauls, David Bowen, Richard Chance, Sharon Chance, Bonita Miller, Rod Miller, Ardath Teeter, and L.W., are dismissed with prejudice to re-filing.

### B. Assessment of Costs

The plaintiffs Doug Pauls, Nina Pauls, David Bowen, Richard Chance, Sharon Chance, Bonita Miller, Rod Miller, Ardath Teeter, and L.W., jointly and severally, shall pay all court costs assessed by the Wapello County Clerk of Court, including but not limited to \$14,826.58 in recoverable deposition expenses claimed by JBS Live Pork, LLC.

### C. Declaration of Frivolous Claims

Claims of David Bowen, Bonita Miller, and Rod Miller are declared to have been frivolous under Iowa Code Section 657.11 (5), and JBS Live Pork, LLC’s request for recovery of “all costs and expenses incurred in the defense of the action [brought by those plaintiffs]” is granted in part, and denied in part.

- 1) JBS is granted alternate recovery of all court costs assessed by the Wapello County Clerk of Court, including but not limited to \$14,826.58 in recoverable deposition expenses, as against David Bowen, Bonita Miller, and Rod Miller jointly and severally.
- 2) JBS’s request for an award of a prorata portion of its attorney fees incurred in defense of the frivolous claims, is denied because current Iowa law does not allow recovery of that type of expense under Section 657.11 (5), and this record does not establish a common-law basis for such a recovery.

**JUDGMENT IS ENTERED ACCORDINGLY, APRIL 20, 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, appearing to read "Annette J. Scieszinski". The signature is fluid and cursive, with a large loop at the beginning and end.

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