

VERDICT: Defense, hay dust trespass/negligence from hay grinding operation.

A 12-0 Billings jury rejected hay dust claims by Douglas & Patricia Dreeszen against Dan Swartz, C&B Hay Grinding, and Henry & Dianne Greene, finding that they did not trespass on Dreeszens' property after 4/27/07 and were not negligent after 4/27/06. Judge Fagg had limited Dreeszens' negligence claim to activities occurring after 4/27/06, and their trespass claims to activities occurring after 4/27/07, pursuant to statutes of limitation. He previously granted summary judgment for Defendants on nuisance (based on §27-30-101(3)) and violation of the right to a clean & healthful environment (based on availability of other remedies).

Dreeszens purchased property across from a silage pit in 1992 and built their home in 1993. Greenes stored corn silage in the pit 1983-00. In 2002 Swartz rented the pit property and began feeding 200 cattle. Greenes inherited the pit in 2008 and continued to rent it to Swartz. Greenes and Swartz hired C&B Hay Grinding to grind round hay bales in the winter feeding months. After Dreeszens sued, C&B no longer did grinding for Swartz, but occasionally rented its grinder to him. Dreeszens alleged that the hay grinding by and for Swartz resulted in continuous deposits of dust, particles, hay, and straw on their home and property which caused severe emotional distress, loss of property value and enjoyment of life, and health problems by Douglas Dreeszen. They asserted trespass, nuisance, negligence, violation of the right to a clean & healthful environment, and punitives.

Dreeszens urged the jury to consider evidence before the statute of limitations of 4/27/06 for negligence and 4/27/07 for trespass, claiming it showed lack of credibility by Defendants and justification for punitives, given their intentional repeat conduct. They suggested in closing that no punitives be awarded against Greenes since Greenes only became owners of the property in 2008 and had no direct involvement in how the pit was used.

Plaintiffs' experts: appraiser Leonard Dailey, Billings; pulmonologist James McMeekin, Billings.

Defendants' experts: none.

Demand, statement of damages of \$550,000 general damages and \$250,000 punitives against Swartz; no offer by Swartz. Demand on C&B, \$30,000; offer by C&B, \$15,000. Demand on Greenes, \$32,500; offer by Greenes, \$5,000. Jury request, undisputed damages presented of \$65,000 for Patricia Dreeszen, \$90,000 for Douglas Dreeszen; jury suggestion, 0. No mediator.

Jury deliberated 4 hours 5th day.

Dreeszen v. Swartz, C&B Hay Grinding, and Greenes, Yellowstone DV-09-579, 8/13/10.

David Charles & Daniela Pavuk (Crowley Fleck), Billings, for Dreeszens; James Halverson (Halverson & Gilbert), Billings, for Swartz (FUMI); Guy Rogers & Jon Wilson (Brown Law Firm), Billings, for C&B (Cincinnati Ins.); Brooke Murphy & Sabrina Manning (Matovich, Keller & Murphy), Billings, for Greenes (State Farm Fire Ins.).