

SD Beef Plant Project Began With Bad Guess On Dirt

BY BOB MERCER
State Capitol Bureau

PIERRE — The man hired to oversee construction of the Northern Beef Packers plant testified in federal bankruptcy court Thursday he didn't know how much fill was needed for the Aberdeen project site.

Bob Breukelman of Huron said he took the fill estimate developed by three Aberdeen earth-moving contractors who were recruited but weren't hired and he then used it to recruit another contractor from Huron in 2006 who was hired and now claims to be underpaid by \$2 million.

Scott Olson Digging, Inc., initially submitted a lump-sum contract for \$900,000 that was accepted by Northern Beef president Dennis Hellwig of Aberdeen in 2006. Olson and Hellwig would eventually sign three additional agreements, with Olson's company paid more than \$3.1 million.

But Olson claims he's still owed approximately \$2.1 million. He previously claimed he was shorted \$3 million.

Much of the difference rests in the fill numbers. Breukelman said the Aberdeen contractors estimated the fill needed at 200,000 cubic yards total of clay, gravel and sand. Olson's invoices show 596,000 cubic yards of materials.

Federal bankruptcy Judge Charles Nail Jr. will make his ruling on Olson's claim some time after the trial's conclusion today (Friday). Northern Beef shut down in 2013 after less than a year of operation and declared bankruptcy.

The White Oak investment firm from San Francisco, California, purchased

the property in bankruptcy court. The plant remains closed.

Breukelman testified Thursday that he made his own determination of the fill needed and his estimate came within "a few thousand" cubic yards of the Aberdeen contractors.

"It grew somewhat as the project slightly changed," Breukelman said.

The site configuration changed, the parking lot's size was expanded and the one-story plant's elevation was increased twice, so that its 320,000 square feet of main floor rested nine feet higher than the local terrain.

Breukelman said a set of surveys typically is used for determining how much fill was used at a large project. But he confirmed that Northern Beef didn't contract for a full survey to be done before the project began.

Francis Brink of Aberdeen, a surveyor and civil engineer, was hired in 2006 to develop a general plan for the site.

Brink said he helped Hellwig and Aberdeen businessman Norg Sanderson through the local platting and permitting processes.

Breukelman said he didn't ask Brink to calculate a fill estimate.

"I'm going to say we worked on it together but he wasn't responsible for the 200,000," Breukelman said.

Brink testified that he outlined a four-phase plan that he delivered Sept. 13, 2006, and he subsequently participated in a pre-bid conference with the Aberdeen contractors: Lien Transportation, Dahme Construction and Jacobs Construction.

Brink said he didn't develop an engi-

neer's estimate of project costs and he purposely didn't estimate the fill.

"That was deliberate. We left that for the contractors to decide," Brink said.

Subsequent survey work was conducted at the site by an Aberdeen firm and later a Huron firm.

When the three Aberdeen contractors submitted a joint bid, Breukelman and Hellwig decided to look elsewhere for a comparison. That led to Breukelman contacting Olson and Olson presenting a contract that Hellwig accepted.

Hellwig eventually recruited Don Ulmer of St. Louis, Missouri, to join the team. Hellwig testified Tuesday that he deferred on most decisions to Breukelman, and Breukelman testified Thursday that he deferred on many decisions to Ulmer.

"He was the project manager on virtually everything that happened on the site," Breukelman said about Ulmer.

Ulmer however testified Thursday that he didn't start work until June 4, 2007. Dirt work had been under way for six months.

Ulmer refused to pay many of the \$2 million of additional invoices that Olson submitted in late 2007 and early 2008.

Ulmer said he repeatedly called the business office for Scott Olson Digging and requested supporting information. He said he never heard from Olson or anyone else at the office.

"It's not hours, it's not days, it was weeks," Ulmer said about the time he spent trying to ascertain the validity of Olson's invoices. Ulmer described the amounts as "ridiculously high."

Olson might testify today (Friday).

Neb. High Court To Rule On Smoking Ban

LINCOLN, Neb. (AP) — The Nebraska Supreme Court will decide whether a lower court was right to strike down exceptions in the state's public smoking ban.

The *Lincoln Journal Star* reports that the state's high court heard arguments Wednesday in the case of Big John's Billiards, an Omaha pool hall, whose owner sued after Nebraska enacted a statewide public smoking ban in 2009. The law bans smoking in all public buildings and private businesses, including bars and restaurants. However, the law provides exceptions for cigar bars, some hotel rooms, tobacco-only retailers and facilities that research the health effects of smoking.

A Lancaster County judge upheld the statewide ban last year, but found that the ban's exceptions were unconstitutional.

The state's high court will determine later whether those exceptions are permissible.

Truck Driver Dies After Vehicle Tips

RAPID CITY (AP) — Police in Rapid City have released the identity of the driver of a dump truck who died after the truck tipped to one side.

Authorities say the incident occurred Thursday when 74-year-old Alvin Howe raised the dump trailer that was filled with gravel. Police say the load was too heavy and caused the truck to roll and fall onto a flat-bed trailer.

Howe was transported to a local hospital where he was pronounced dead.

Police say the incident is under investigation.

Man Gets 25 Years In Child's Death

SIoux FALLS (AP) — A man found guilty of manslaughter in the death of his girlfriend's 1 1/2-year-old son will spend 25 years in prison.

The *Argus Leader* reports that 26-year-old Congolese refugee Manegabe Ally was sentenced Thursday to 45 years in prison, with 20 years suspended.

Ally was caring for Merveil Kasangu on Christmas Eve 2012, when he called 911 to report that the boy wasn't breathing. The child died in the hospital the next day.

A coroner who testified during the trial said the boy died of a skull fracture. The trial's testimony centered on whether the injury was accidental.

Ally maintained that the child fell off a bed and onto the floor. But doctors said Ally's claim didn't explain the fracture and other injuries.

Mammoth Site In SD Gets \$862K

HOT SPRINGS (AP) — The Mammoth Site in southwest South Dakota has been granted \$862,100 in federal funding to build a new learning center that will include two theaters.

Officials with the site in Hot Springs plan to build a 5,800-square-foot addition that will feature a new entryway, gathering area, storage, and two 53-seat theaters.

Business manager Joe Muller says the funding will give South Dakota a world-class working paleontological site and museum. About 100,000 people visit the site each year.

An official with the U.S. Department of Agriculture announced the funding during a site visit Thursday.

At least 60 mammoths have been found in the area. The site has been under exploration since 1974, when a construction crew dug up mammoth bones on the south side of Hot Springs.

Thune Takes High Tech Companies On Tour

BY CARSON WALKER
Associated Press

SIoux FALLS — High technology executives and two members of the government agency that regulates the industry joined Sen. John Thune Thursday on a tour intended to show how the Internet helps small South Dakota businesses connect with customers from around the world.

Representatives from AOL Inc., Yelp Inc. and Facebook Inc. and two members of the Federal Communications Commission accompanied Thune.

Michael Beckerman, president and CEO of The Internet Association, which organized the event, said it was the seventh such event at which the group shows members of Congress how much traditional companies in their states rely on the Internet.

"Our industry is a rela-



Thune

tively new industry, when you think about the history of commerce in the United States," he said. "We want to help build that understanding that the Internet is building jobs throughout the country."

Thune is the ranking member of the Senate Commerce, Science and Transportation Committee, which oversees Internet issues, and is in line to become chairman if the Republicans regain a majority of the U.S. Senate in November. He will be influential in the debate over an FCC proposal that would allow Internet providers to charge other companies for priority, high-speed, access to their users.

The FCC on May 15 moved the proposed rules

governing so-called "net neutrality" into a formal public comment period. After that 120-day period ends, the FCC will revise the proposal and vote on a final set of rules. FCC Chairman Tom Wheeler has said he wants the rules in place by the end of this year.

Thune opposes them and has joined other Republican leaders in urging the FCC to abandon the effort.

The two FCC commissioners who voted against the rules, Michael O'Rielly and Ajit Pai, joined Thune on Thursday's tour that first stopped at Blend Interactive in downtown Sioux Falls, a Web design and development company. Partner and creative director Karla Santi said the firm that has grown to 17 employees has clients around the U.S. and internationally, so an open Internet is vital.

"That's how we started and that's what we would

like to fight for, as well," she said.

Leigh Freund, vice president and chief counsel in global public policy at AOL, said the company sees Thune as an ally because of his support for the technology industry and desire for minimal regulation.

"He gets that regulation can stand in the way," said Myriah Jordan, a public policy manager with Facebook.

Thune didn't respond in detail to the net neutrality issue but said he doesn't want companies to be subject to "Ma Bell regulations," referring to rules that once controlled the telephone industry.

Ex-Worker Sues Dunham's Sports

BY JOE MANDAK
Associated Press

PITTSBURGH — A former assistant manager of a western Pennsylvania Dunham's Sports store has sued the Michigan-based chain, accusing the company of circumventing federal overtime pay laws by having its assistant managers perform mostly manual labor, including opening new stores.

The former worker, Jason Vasil, who now lives in Surprise, Arizona, is seeking class-action status for his lawsuit because he contends the company routinely flouted overtime laws by having its assistant managers be exempt from hourly overtime, even though he says the assistants spent about 80 percent of their time on non-managerial tasks.

He's suing the company's parent firm, Dunham's Athleisure Corp., which does business as Dunham's with more than 200 stores in 17 states, mostly in the Midwest and South. A spokesman with the Troy, Michigan, sporting goods chain did not immedi-

ately return a call about the federal lawsuit filed late Wednesday in Pittsburgh.

Vasil lived in Sharon, Pennsylvania, and worked at the company's store in nearby Hermitage from July 2012 through last month.

Vasil contends he routinely worked more than 40 hours a week, and often more than 50 hours, for a salary instead of an hourly wage for which he could have earned overtime.

Vasil contends Dunham's assistant managers "performed managerial duties approximately less than 20 percent of the time during the week." Assistant managers didn't interview, hire or fire employees; didn't review employees' performance; and didn't decide whether underlings received raises, the lawsuit said.

Instead, the assistant managers spent most of their time on "non-managerial functions" including running cash registers, assisting customers, stocking shelves, unloading trucks and other light maintenance and janitorial duties.

The lawsuit also contends Dunham's would use dozens of assistant managers to set up new store locations, requiring some to drive six to 20 hours from their own store locations, and then working 12 to 15 hours per day for four or five days to open up a new store.

The assistant managers would stay in hotel rooms overnight and were not paid overtime, the lawsuit contends.

"The defendant utilized assistant store managers to perform this work as a way to reduce labor costs associated with the grand opening of a new store location," the lawsuit said.

According to its website, the chain grew out of a single Dunham's Bait and Tackle shop that opened in 1937 in Waterford, Michigan. The company now has stores in Alabama, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, West Virginia and Wisconsin.

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