

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

E.R. 1, LLC, assignee of CASEYVILLE	)	
SPORT CHOICE, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 08-30
	)	(Citizens Enforcement-Land)
ERMA I. SEIBER, ADMINISTRATIX OF	)	
THE ESTATE OF JAMES A. SEIBER,	)	
DECEASED, ERMA I. SEIBER,	)	
INDIVIDUALLY and FAIRMONT PARK,	)	
INC.,	)	
	)	
Respondents.	)	

**COMPLAINANT’S MOTION TO COMPEL DISCOVERY RESPONSES  
FROM RESPONDENT SEIBER**

COMES NOW Complainant E.R. 1, LLC, an assignee of Complainant Caseyville Sport Choice, LLC (“Caseyville”), by and through its undersigned counsel, and pursuant to Ill. S. Ct. R. 219(a), respectfully moves the Court to compel discovery responses from Respondent Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber, Individually (“Seiber”). In further support of its motion, Caseyville states and alleges as follows:

1. Complainant filed a Complaint before the Illinois Pollution Control Board (“PCB”) in October of 2007 and a First Amended Complaint in August of 2008. Among other things, Complainant stated that the Respondents violated provisions of the Illinois Environmental Protection Act by dumping over 159,000 tons of horse manure and over 2,600 tons of municipal trash on land in St. Clair County, Illinois.

2. Caseyville served eleven Requests for Production (the “Discovery Requests”) on Seiber on March 25, 2011. A true and correct copy of the Discovery Requests are attached as Exhibit A hereto. On September 26, 2011, Seiber filed a response to the Discovery Requests (“Seiber Response”). A true and correct copy the Seiber Response is attached as Exhibit B hereto.

3. The Discovery Requests sought, among other things, “[v]erified financial statements for Respondents for the years 2008 - present.” (Exhibit A, ¶ 9.) Seiber’s Response to Discovery Request No. 9 stated: “The respondent filed no financial statements during the time provided. The respondent is providing the following documents in support of this request: (A) 2009 tax return of Erma I. Seiber; (B) Form 4549 filed December 18, 2007 for Erma I. Seiber and the Estate of James Seiber, deceased; (C) Misc. bank statements for September 2011 for accounts held in the Name of Erma I. Seiber and held in the Heritage Bank, United Southern Bank, and the Bank of Edwardsville.” (Exhibit B, ¶9). Seiber provided copies of the documents listed above to Caseyville on September 26, 2011 but, to date, has not provided any updated tax returns or bank statements.

4. The Discovery Requests also sought “[a]ll pleadings and filings related to the Estate of James A. Seiber.” (Exhibit A, ¶11). Seiber’s Response to Discovery Request No. 11 stated: “All estate proceedings were commenced in Kentucky. These documents will be provided.” (Exhibit B, ¶11). To date, Seiber has not provided copies the estate planning documents.

5. Pursuant to 35 Illinois Administrative Code §101.616(h), Seiber must amend Seiber’s Responses if “the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.” Seiber has an obligation to provide updated responses to all of the Discovery Requests, including Discovery Request Nos. 9 and 11.

6. Caseyville requests that Seiber provide updated financial and estate documents that are responsive to Discovery Request Nos. 9 and 11 that include, but are not limited to, the following:

- a. Seiber’s updated federal and state tax returns from 2010 and 2011.
- b. Seiber’s most recent bank statements for all accounts from banks including, but not limited to, Heritage Bank, United Southern Bank, and the Bank of Edwardsville.

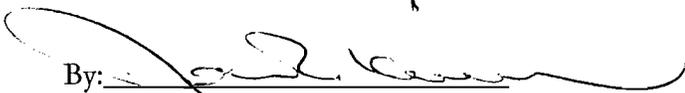
- c. Seiber's updated Form 4549.
  - d. All Federal Estate Tax Returns (Form 706), including all exhibits, attachments, and calculations, for James A. Seiber and/or Erma I. Seiber from 2005 to the present.
  - e. All pleadings, filings, and legal/probate proceedings related to the Estate of James A. Seiber, including James A. Seiber's last will and trust instruments, including all exhibits and attachments.
  - f. All pleadings, filing, and legal/probate proceedings related to the Estate of Erma I. Seiber, including Erma I. Seiber's last will and trust instruments, including all exhibits and attachments.
  - g. All State inheritance tax and estate tax returns, including all exhibits, attachments, and calculations, for James A. Seiber and/or Erma I. Seiber from 2005 to the present.
  - h. All financial documents filed in connection with the Estate of James A. Seiber and/or Erma I. Seiber, including a completed personal financial statement on the Seiber's estate and documents discussing any assets, liabilities, and potential creditors of the Estate from 2005 to the present.
7. During a conference call with Hearing Officer Webb on August 21, 2012, Caseyville asked Seiber to provide updated responses to the Discovery Requests. On September 5, 2012, Counsel for Caseyville re-iterated the request for responses to the Discovery Requests via e-mail. Counsel for Caseyville stated that Seiber needed to provide the documents by September 7, 2012 or Caseyville will have no choice but to move to compel this information. To date, Caseyville has not received any updated responses from Seiber. Accordingly, Caseyville now seeks the Court to compel Seiber to produce updated financial documents responsive to Discovery Request Nos. 9 and 11.

WHEREFORE, Complainant respectfully requests the Court to compel Respondent Seiber to provide an updated response to the Discovery Request Nos. 9 and 11 immediately and to award Complainant any such additional relief as the Court may deem appropriate under the circumstances or which Complainant may be entitled.

Dated: September 21, 2012

Respectfully Submitted,

BRYAN CAVE LLP

By: 

Daniel Nester (ARDC No. 6208872)  
Steven J. Poplawski (ARDC No. 6193897)  
John R. Kindschuh (ARDC No. 6284933)  
Christopher Blaesing (ARDC No. 6298240)  
One Metropolitan Square  
211 North Broadway Suite 3600  
St. Louis, MO 63102  
Telephone: (314) 259-2000  
Telefax: (314) 259-2020

*Attorneys for E.R. 1, LLC, As Assignee  
Of Caseyville Sport Choice, LLC*

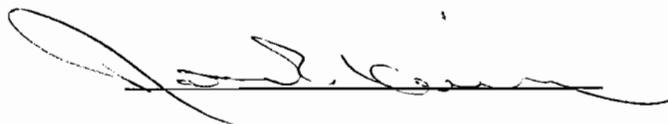
**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing response was electronically filed with the Office of the Clerk and was served upon the following parties via U.S. Mail on the 21<sup>st</sup> day of September, 2012:

David J. Gerber  
Attorney at Law  
241 North Main Street  
Belleville, IL 62025  
*Attorney for Caseyville Sport Choice, LLC*

Donald W. Urban  
Sprague and Urban  
26 E. Washington Street  
Belleville, IL 62220  
*Attorneys for Erma I. Seiber*

Penni S. Livingston  
Attorney At Law  
5701 Perrin Road  
Fairview Heights, IL 62208  
*Attorney for Fairmount Park, Inc.*



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
CASEYVILLE SPORT CHOICE, LLC,	)	
An Illinois Limited Liability Company,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 2008-030
	)	
ERMA I. SEIBER, Administratrix of the	)	
Estate of James A. Seiber, Deceased, and	)	
ERMA I. SEIBER, in Her Individual	)	
Capacity, and	)	
	)	
FAIRMOUNT PARK, INC., a Delaware	)	
Corporation,	)	
	)	
Respondents.	)	

**ER. 1, LLC, AS ASSIGNEE OF COMPLAINANT CASEYVILLE SPORT CHOICE, LLC, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT ERMA I. SEIBER, ADMINISTRATRIX OF THE ESTATE OF JAMES A. SEIBER AND IN HER INDIVIDUAL CAPACITY**

E.R. 1, LLC, ("E.R. 1") as assignee of Complainant Caseyville Sport Choice, LLC ("CSC"), by and through its undersigned counsel, pursuant to 35 Ill. Admin. Code 101.616 and Illinois Supreme Court Rule 214, hereby serves the following request for production of documents upon Respondent Erma Seiber, administratrix of the estate of James A. Seiber and in her individual capacity ("Respondent"), to be answered in writing, under oath, within twenty-eight (28) days after service of the request.

**I. INSTRUCTIONS**

1. In answering these requests for production, furnish all information available to Respondent or her employees, agents, contractors, experts or consultants, or which is

ascertainable by reasonable inquiry, whether or not the requested information might be available from another entity.

2. If a request for production cannot be answered in full, answer all parts of the production request to the extent possible and specify the reason for the inability to provide additional information.

3. Respondent is required to serve upon E.R. 1 corrected, supplemented, or augmented answers hereto and documents or other forms of information from whatever source, which arguably tend to show that Respondent's prior answers and production are, might be, were or might have been in a sense incorrect, incomplete, partially misleading, or less than fully responsive or truthful.

4. If any documents responsive to this request no longer are in existence or in your possession, please state the reason that it no longer is in existence and/or the identity of the person presently in possession of the document.

5. If any documents are being withheld because of an alleged privilege, please identify the documents with sufficient specificity so that a decision can be made about whether to pursue a motion to compel concerning the alleged privilege.

6. For purposes of this First Request for Production of Documents, the word "and" includes the disjunctive "or" and the word "or" includes the conjunctive "and." Words in the singular shall be interpreted to include both the singular and the plural. A masculine, feminine or neuter form of a word shall be interpreted to include the other genders. The use of any tense of any verb shall be interpreted to include all other tenses.

**II. DEFINITIONS**

1. "Communication" means all occasions upon which information was conveyed from one person to another: (a) by means of a document, or (b) verbally, including by means of a telephone or other electrical or mechanical means.

2. "Complainant" shall mean the Complainant listed in the Complaint, and any employee, agent or representative of Complainant.

3. "Document" has the same meaning as in Illinois Supreme Court Rule 214, and includes any written or recorded matter of any kind or description however produced or reproduced, whether draft or final, original or reproduction in your custody or control.

4. "Site" shall mean the property comprised of three parcels of land described in the Complaint.

**III. REQUEST FOR PRODUCTION OF DOCUMENTS**

1. All pleadings, filings, discovery requests, discovery responses and deposition transcripts filed, served or produced in this action.

2. All documents produced by any party in response to any discovery request (e.g., interrogatory, request for production) in this action.

3. All documents relating to the circumstances and violations alleged in the Complaint, including those that refute the allegations made in the Complaint.

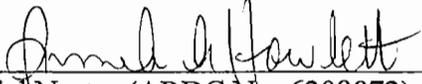
4. All documents related to or supporting Respondent's statements, admissions or denials contained in her Answer to Complainant's Complaint.

5. All documents and communications between Respondent and Fairmount Park, Inc. regarding the arrangement between Respondent and Fairmount concerning the disposal of Fairmount's waste.

6. All documents and communications relating to any concerns raised or complaints made by any person or entity, including the Illinois Environmental Protection Agency or any local regulatory authority concerning the Site.
7. Documentation concerning whether any of the claims made in the Complaint are covered by insurance.
8. Documentation demonstrating whether James A. Seiber or Erma I. Seiber had or have life insurance.
9. Verified financial statements for Respondent for the years 2008-present.
10. Documentation regarding the disposition of the purchase price James A. Seiber received for the sale of the Site.
11. All pleadings and filing related to the estate of James A. Seiber.

Dated: March 25, 2011

Respectfully submitted.

By:   
Daniel Nester (ARDC No. 6208872)  
Steven J. Poplawski (ARDC No. 6193897)  
Pamela Howlett, Esq. (ARDC No. 6281863)  
Christopher Blaesing, Esq.  
(ARDC No. 6298240)

Bryan Cave LLP  
211 North Broadway, Suite 3600  
St. Louis, Missouri 63102  
(314) 259-2000  
(314) 259-2020 (fax)  
*Attorneys for E.R. 1, LLC, As Assignee of  
Caseyville Sport Choice, LLC*

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>CASEYVILLE SPORT CHOICE, LLC,</b>	)	
<b>An Illinois Limited Liability Company,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB 2008-030</b>
	)	
<b>ERMA I. SEIBER, Administratrix of the</b>	)	
<b>Estate of James A. Seiber, Deceased, and</b>	)	
<b>ERMA I. SEIBER, in Her Individual</b>	)	
<b>Capacity, and</b>	)	
	)	
<b>FAIRMOUNT PARK, INC., a Delaware</b>	)	
<b>Corporation,</b>	)	
	)	
<b>Respondents.</b>	)	

**CERTIFICATE OF SERVICE**

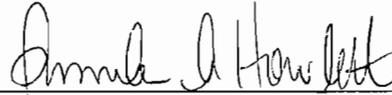
I, the undersigned, on March 25, 2011, caused the foregoing E.R. 1, LLC, AS ASSIGNEE OF COMPLAINANT CASEYVILLE SPORT CHOICE, LLC, FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT ERMA I. SEIBER, ADMINISTRATRIX OF THE ESTATE OF JAMES A. SEIBER AND IN HER INDIVIDUAL CAPACITY and NOTICE OF FILING to be electronically filed with the Office of the Clerk, and caused a true and correct copy of said documents to be served upon:

David J. Gerber  
Attorney at Law  
241 North Main Street  
Edwardsville, Illinois 62025  
*Attorney for Caseyville Sport Choice, LLC*

Donald W. Urban  
Sprague and Urban  
26 E. Washington Street  
Belleville, Illinois 62220  
*Attorneys for Erma I. Seiber*

Penni S. Livingston  
Attorney at Law  
5701 Perrin Road  
Fairview Heights, Illinois 62208  
*Attorney for Fairmount Park, Inc.*

By placing same in U.S. Mail at St. Louis, Missouri.



Daniel Nester (ARDC No. 6208872)

Steven J. Poplawski (ARDC No. 6193897)

Pamela Howlett, Esq. (ARDC No. 6281863)

Christopher Blaesing, Esq.

(ARDC No. 6298240)

Bryan Cave LLP

211 North Broadway, Suite 3600

St. Louis, Missouri 63102

(314) 259-2000

(314) 259-2020 (fax)

*Attorneys for E.R. 1, LLC, As Assignee of  
Caseyville Sport Choice, LLC*

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>CASEYVILLE SPORT CHOICE, LLC.</b>	)	
<b>an Illinois Limited Liability Company,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB 2008-030</b>
	)	
<b>ERMA I. SEIBER, Administratrix of the</b>	)	
<b>Estate of James A. Seiber, deceased and</b>	)	
<b>ERMA I. SEIBER, in her individual capacity</b>	)	
<b>and FAIRMONT PARK, INC.,</b>	)	
<b>a Delaware Corporation,</b>	)	
	)	
<b>Respondents.</b>	)	

**RESPONDENT ERMA I. SEIBER, ADMINISTRATRIX OF THE ESTATE  
OF JAMES A. SEIBER, DECEASED, AND ERMA I. SEIBER, IN HER  
INDIVIDUAL CAPACITY, RESPONSE TO FIRST REQUEST FOR  
PRODUCTION FILED BY COMPLAINANT CASEYVILLE  
SPORT CHOICE, LLC.**

Now comes the respondent (and counter-respondent) ERMA I. SEIBER, individually and in her capacity as administratrix of the Estate of James A. Seiber, deceased, by and through her attorneys, Sprague & Urban, and in response to the first request to produce filed by the Caseyville Sport Choice, LLC ( hereinafter referred to as "CSC") respectfully produces the following documents:

1. All pleadings, filing, discovery requests, discovery responses, and deposition transcripts filed, served or produced in this action:

The respondent has previously produced all documents governed by this request to the complainant's initial attorney and the attorney for Fairmont Park, Inc. As such this request is duplicative. To the extent that there is a particular pleading sought by the complainant, the

respondent will comply with that request.

2. All documents produced by any party in response to any discovery request:

The respondent has previously produced all documents governed by this request to the complainant's initial attorney and the attorney for Fairmont Park, Inc. It is also the understanding of the respondent that Fairmont Park, Inc. has previously provided responses that govern this request. As such this request is duplicative. In answer to this request, the respondent is providing a copy of the Respondent's First interrogatories provided to attorney John Long, attorney for the complainant and a copy of the answers to first set of interrogatories provided to Fairmont Park, Inc.

3. All documents relating to the circumstances and violations alleged in the complaint, including those that refute the allegations made in the complaint:

The respondent has previously produced all documents governed by this request to the complainant's initial attorney and the attorney for Fairmont Park, Inc. As such this request is duplicative. The complainant has previously taken the discovery depositions of James Seiber Jr. and Erma Seiber which refute the allegations contained in the complaint.

4. All documents related to or supporting the respondent's statements, admissions or denials contained in her answer to complainant's complaint:

The respondent has previously produced all documents governed by this request to the complainant's initial attorney and the attorney for Fairmont Park, Inc. As such this request is duplicative. To the extent that there is a particular pleading sought by the complainant, the respondent will comply with that request. The complainant has previously taken the discovery depositions of James Seiber Jr. and Erma Seiber which constitutes the statements in support of their answer. A copy of the depositions is provided.

5. All documents and communications between respondent and Fairmont Park, Inc. Regarding the arrangement between Respondent and Fairmont concerning the disposal of Fairmont's waste:

The respondent has previously produced all documents governed by this request to the complainant's initial attorney and the attorney for Fairmont Park, Inc. As such this request is duplicative. The complaint has previously taken the discovery depositions of James Seiber Jr. and Erma Seiber which constitutes the statements in support of their answer. It is the belief of the respondent that all documents governed by this request have also been produced by Fairmont Park, Inc. to the extent that said documents exist.

6. All documents and communications relating to any concerns raised or complaints made by any person or entity, including the Illinois EPA or any local regulatory authority concerning the site.

The respondent has previously produced all documents governed by this request to the complainant's initial attorney and the attorney for Fairmont Park, Inc. As such this request is duplicative. To the extent that there is a particular items sought by the complainant, the respondent will comply with that request. The complaint has previously taken the discovery depositions of James Seiber Jr. and Erma Seiber which constitutes the statements in support of their answer. The respondent acknowledges that communications have been made in the past but has no documents beyond what has been previously been furnished.

7. Documents concerning whether any of the claims made in the complaint are covered by insurance:

To the best of the respondent's knowledge no insurance exists which would govern these claims.

8. Documents demonstrating whether James A. Seiber or Erma I Seiber had or have life insurance:

The nature and extent of insurance held by either of the Seibers has not yet been determined. These documents will be provided when they are received, if insurance exists for either party.

9. Verified financial statements for respondent for the years 2008 to present:

The respondent has filed no financial statements during the time provided. The respondent is providing the following documents in support of this request:

A. 2009 tax return of Erma I. Seiber

B. Form 4549 filed December 18, 2007 for Erma I. Seiber and the  
Estate of James Seiber, deceased.

C. Misc. bank statements for September 2011 for accounts held in the  
Name of Erma I. Seiber and held in the Heritage Bank,  
United Southern Bank, and the Bank of Edwardsville.

10. Documentation regarding the disposition of the purchase price James

A. Seiber received for the sale of the site:

Respondent objects to the over broad nature of this request.

11. All pleadings and filings related to the Estate of James A. Seiber.

All estate proceedings were commenced in Kentucky. These documents will be provided.

Respectfully submitted:



DONALD W. URBAN

DONALD W. URBAN #3125254

Sprague & Urban

Attorneys at Law

26 East Washington Street

Belleville, IL 62220

618-233-8383

618-233-5374 (fax)

Attorney for Erma I. Seiber

and the Estate of James A.

Seiber, deceased.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was forwarded to the below listed counsel by enclosing same in an envelope, with proper first class postage fully prepaid and depositing said envelope in a United States mail box in Belleville, Illinois this 20th day of September, 2011.

Mr. Daniel Nester  
Attorney at Law  
One Metropolitan Square  
211 North Broadway, Suite 3600  
St. Louis, MO 63102

Ms. Penni S. Livingston  
Attorney at Law  
5701 Perrin Road  
Fairview Heights, IL 62208

Melissa A. Allen