

STATEMENT OF ISSUES

1. Did the trial court err in denying Mehlhaff's motion for partial summary judgment based on the exclusive remedy provisions of South Dakota's Workers' Compensation Act?

The trial court denied Mehlhaff's motion for partial summary judgment, finding that as a matter of law the exclusive remedy provisions of the South Dakota Workers' Compensation Act allow an employee of a general contractor, having received worker's compensation benefits from his employer, may bring a tort action against a subcontractor for damages arising of an accident with the subcontractor's employee.

2. Did the trial court err in denying Mehlhaff's motion for extension of deadline to disclose an expert accident reconstructionist?

The trial court denied Mehlhaff's motion for an extension by which to disclose its expert accident reconstructionist for use at trial.

3. Did the trial court err in granting the Estate's motion in limine, precluding the jury from considering the negligence of Spencer Quarries in order to properly apportion the negligence of the parties?

The trial court granted in part the Estate's motion in limine to preclude Mehlhaff from introducing evidence of Spencer Quarries' negligence in managing the job site, for purposes of apportioning the negligence of the parties. The trial court denied the Estate's motion in limine to the extent that Mehlhaff could offer evidence of traffic control rules on the job site. However, the trial court ultimately precluded Mehlhaff from offering any evidence of traffic control during the trial.

4. Did the trial court err in granting the Estate's motions for judgment notwithstanding the verdict and new trial when there was sufficient evidence to support instructing the jury on contributory negligence and to support the jury's verdict?

The jury returned a verdict in favor of Mehlhaff, finding Terry L. Thompson contributorily negligent more than slight. After trial, the court found that it should have granted the Estate's motion for a directed verdict on the issue of contributory negligence and found that there was insufficient evidence to support the jury's verdict.