WEDNESDAY, FEBRUARY 13, 2008
10:00 A.M.

NO. 1

#24543

GETTYSBURG SCHOOL DISTRICT 53-1,
Plaintiff and Appellee,

vs.

HELMS AND ASSOCIATES, a division Of SCHUMUCKER, PAUL, NOHR and ASSOCIATES, INC.,
Defendants,

and

BITUMINOUS PAVING, INC.,
Defendant and Appellant.

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The Honorable James W. Anderson **(CIV 05-20)**
Sixth Judicial Circuit
Potter County

20-20-10

STATEMENT OF THE LEGAL ISSUES

1. **WHETHER THE DISTRICT'S CLAIMS ARE BARRED BY FAILURE TO PLEAD AND PROVE COMPLIANCE WITH ITS OWN CONTRACTUAL CONDITIONS PRECEDENT TO CIVIL ACTION?**

Comment: The Trial Court denied Bituminous's motions for directed verdict/judgment as a matter of law during trial, and denied the post-trial motions for judgment as a matter of law and/or new trial.

Most Relevant Statutes:

SDCL § 5-18-11
SDCL § 15-6-9(c)
SDCL § 20-2-4
SDCL § 20-2-5

Most Relevant Cases:

Farmers Feed & Seed, Inc. v. Magnum Enterprises,Inc., 344 N.W. 2d 699, 701 (S.D. 1984)
Johnson v. Coss, 667 N.W. 2d 701, 705-706 ¶13, 2003 S.D. 86
Kyburz v. State, 114 N.W. 2d 645, 647 (S.D. 1961).

2. **WHETHER THE DISTRICT'S CLAIMS ARE BARRED BY WAIVER AND/OR ESTOPPEL?**

Comment: The Trial Court denied Bituminous's motion for directed verdict/judgment as a matter of law during trial, and denied the post-trial motions, and renewed motions for judgment as a matter of law jointly and/or alternatively for new trial.

Most Relevant Cases:

Subsurfco, Inc. v. B.Y. Water Dist., 337 N.W. 2d 448, 456 (S.D. 1983)
L. R. Foy Constr. Co., Inc. v. Spearfish School Dist., 341 N.W. 2d 383, 386 (S.D. 1983)
Northern Improvement Co. v. SD State Highway Comm'n., 267 N.W. 2d 208, 214 (S. D. 1978)

3. **WHETHER THE DISTRICT'S TORT CLAIMS ARE BARRED DUE TO THE JURY'S APPORTIONMENT OF 30 PERCENT CONTRIBUTORY AND/OR IMPUTED NEGLIGENCE TO IT AS A MATTER OF LAW?**

Comment: The Trial Court denied the post-trial motions for judgment as a matter of law and/or new trial.

Most Relevant Statutes:

SDCL § 59-6-9
SDCL §20-9-2

Most Relevant Cases:

Woods v. City of Crooks, 559 N.W. 2d 558 (S.D. 1997)
Lovell v. Oahe Elec. Coop., 382 N.W. 2d 396, 399 (S.D. 1986)
Schmidt v. Royer, 574 N.W. 2d 618 (S.D. 1998)

4. **WHETHER, THE DISTRICT'S CONTRACT CLAIMS ARE BARRED DUE TO THE CONFUSING AND PREJUDICIAL UNIFORM COMMERCIAL CODE WARRANTY INSTRUCTIONS?**

Comment: The Trial Court denied Bitiuminous's objections, and exception during settlement to the Uniform Commercial Code breach of warranty instructions.

Most Relevant Statutes:

SDCL § 57A-2-103(1)(d)
SDCL § 57A-2-105 (1)

Most Relevant Cases:

Sherman v. Sherman, 660 N.W. 2d 393, 2000 S.D. 117
Jandreau v. Sheesley Plumbing & Heating Co., Inc., 324 N.W. 2d 266 (S.D. 1982)

5. **WHETHER THE TRIAL COURT'S VERDICT FORM WAS CONFUSING AND PREJUDICIAL AND REQUIRES A NEW TRIAL PURSUANT TO SDCL § 15-6-59?**

Comment: The Trial Court rejected Bituminous's exception and objections to the Verdict Form during settlement, and the post-trial motions.

Most Relevant Statutes:

SDCL §15-6-49(a)
SDCL § 15-6-49(b)

Most Relevant Cases:

Woods v. City of Crooks, 559 N.W. 2d 558 (S.D. 1997)
Knudson v. Hess, 556 N.W. 2d 73, 1996 (S.D. 137)

6. WHETHER ALTERNATIVELY, THE AWARD OF PREJUDGMENT INTEREST WAS ERRONEOUS AS A MATTER OF LAW?

Comment: The Trial Court denied Bituminous's post-trial motion to amend the judgment to strike prejudgment interest and/or alternatively for judgment as a matter of law denying the prejudgment interest or new trial.

Most Relevant Statutes:

SDCL § 21-1-11
SDCL § 21-1-13.1

Most Relevant Cases:

South Dakota Building Auth. v. Geiger v. Berger Assoc., P.C.
414 N.W. 2d 15, 18 (S.D. 1987)
Arcon v. S.D. Cement Plant, 405 N.W. 2d 45, 47 (S.D. 1987)

7. WHETHER, ALTERNATIVELY, THE AWARD OF EXTRA-STATUTORY DISBURSEMENTS INCLUDING ATTORNEY'S FEES AND EXPERT WITNESS FEES WAS ERRONEOUS AS A MATTER OF LAW?

Comment: The Trial Court denied Bituminous's post-trial motion together with objections and exceptions to the District's proposed findings of fact and conclusions of law for the award of extra-statutory attorney's fees, expert witness fees and other extra-ordinary disbursements.

Most Relevant Statutes:

SDCL §15-17-38
SDCL §15-17-37
SDCL §19-5-1

Most Relevant Cases:

O'Connor v. King, 479 N.W. 2d 162 (S.D. 1991)
Schrader v. Tjarks, 522 N.W. 2d 205 (S.D. 1994)
Nelson v. Nelson Cattle Co., 513 N.W. 2d 900 (S.D. 1994).