

TUESDAY, FEBRUARY 17, 2009
9:00 A.M.

NO. 1

#24976

DAKOTA PLAINS AG CENTER, LLC,
and NATIONWIDE AGRIBUSINESS,
Plaintiffs and Appellees,

vs.

MARCIA SMITHEY, as personal
representative of the Estate
of Edward Smithey,
Defendant and Appellant.

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(FOR APPELLANT)

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(FOR APPELLEES)

The Honorable Glen W. Eng
First Judicial Circuit
Hutchinson County

(CIV 07-115)

STATEMENT OF LEGAL ISSUES

1. In an action for declaratory judgment to establish the amount of a workers' compensation lien on settlement proceeds from a wrongful death action, may a South Dakota Circuit Court change the allocation of damages between economic loss and pecuniary loss that was ordered by the United States District Court in the underlying action?

The trial court ignored the United State District Court's Order and did not allocate any damages to pecuniary loss.

Most Relevant Cases, Constitutional & Statutory Provisions:

Zoss v. Dakota Truck Underwriters, 1998 SD 23, 575 NW2d 258, (also referred to as *Zoss-I*).

Zoss v. Dakota Truck Underwriters, 1999 SD 37, 590 NW2d 911 (also referred to as *Zoss-II*).

Gottschalk v. S.D. Real Estate Commission, 264 NW2d 905, (1978).

United States Constitution, Article VI, §1 (Full Faith and Credit Clause).

SDCL §62-4-39.

2. If the circuit court can modify the United States district court allocation of damages, then must the circuit court hold a hearing to determine the proper allocation of damages?

No evidence was presented to the trial court on allocation of damages and the trial court failed to allocate damages between economic and pecuniary damages.

Most Relevant Cases, Constitutional & Statutory Provisions:

Zoss v. Dakota Truck Underwriters, 1998 SD 23, 575 NW2d 258, (also referred to as *Zoss-I*).

Zoss v. Dakota Truck Underwriters, 1999 SD 37, 590 NW2d 911 (also referred to as *Zoss-II*).

Sander v. Gieb, Elston, Frost, PA, 605 NW2d 107 (SD 1993).

SDCL §62-4-39.

3. When there is a subrogation claim for workers' compensation benefits paid, does SDCL §62-7-36(1) limit attorney fees to 25% of the workers' compensation benefits recovered from a third party?

Trial court found that attorney fees for portion of recovery that related to recovery of workers' compensation benefits were limited to 25%.

Most Relevant Cases, Constitutional & Statutory

Provisions:

MGA Insurance Co., Inc. v. Goodsell, 2005 SD 118,
707 NW2d 483.

Wiersma v. Maple Leaf Farms, 1996 SD 16, 543 NW2d
787.

SDCL §62-4-39.

SDCL §62-7-36.