

TUESDAY, JANUARY 13, 2009
10:00 A.M.

NO. 2

#24892, #24904

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION,
Plaintiff and Appellant,

vs.

ACUITY, a Mutual Insurance Co.,
f/k/a HERITAGE MUTUAL INSURANCE
COMPANY, d/b/a HERITAGE INSURANCE,
Defendant and Appellee.

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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Robert L. Timm
Third Judicial Circuit
Beadle County

(CIV 01-327)

NOTICE OF REVIEW FILED JUNE 6, 2008

20-20-10

STATEMENT OF THE LEGAL ISSUE

1. Whether the Trial Court Erred in Granting Acuity's Motion for Summary Judgment Because DM&E has Presented a Genuine Issue of Material Fact that Should be Decided by a Jury.

Hammonds v. Hartford Fire Ins. Co., 501 F3d 991 (8th Cir 2007)

Brooks v. Milbank Ins. Co., 2000 SD 16, 605 NW2d 173

Isaac v. State Farm Mut. Auto. Ins. Co., 522 NW2d 752, 763 (SD 1994)

Bellville v. Farm Bureau Mut. Ins. Co., 702 NW2d 468, 473 (Iowa 2005)

Statement of the Issue

1. Whether the trial court erred in granting summary judgment in favor of Acuity on DM&E's bad faith claim?

The trial court granted Acuity's motion for summary judgment on DM&E's bad faith claim.

Stene v. State Farm Mut. Auto Ins. Co., 1998 SD 95, 583 N.W.2d 399

Howie v. Pennington County, 1997 SD 45, 563 N.W.2d 116

Bellville v. Farm Bureau Mut. Ins. Co., 702 N.W.2d 468 (Iowa 2005)

Shelter Mutual Insurance Company v. Barton, 822 So.2d 1149 (Ala. 2001)

Notice of Review Issue

1. Whether the trial court abused its discretion in granting DM&E's motion to compel and denying Acuity's motions to quash the subpoenas issued by DM&E to James Moore and Gary Thimsen.

The trial court granted DM&E's motion to compel discovery and at the same time denied Acuity's motions to quash the subpoenas issued to James Moore and Gary Thimsen.

SDCL § 19-13-2(5)

SDCL § 19-13-3

Knecht v. Weber, 2002 SD 21, 640 N.W.2d 491

Kaarup v. St. Paul Fire & Marine Ins. Co., 436 N.W.2d 17 (S.D. 1989)