

## STATEMENT OF LEGAL ISSUES

- I. WHETHER THIS CASE IS GOVERNED BY STARE DECISIS OR WHETHER THE LEGISLATURE'S 1998 AMENDMENT TO THE COMPARATIVE NEGLIGENCE STATUTE REQUIRES THIS COURT TO ESTABLISH A NEW METHOD TO COMPARE NEGLIGENCE OF PLAINTIFFS AND DEFENDANTS?

The Trial Court instructed the jury under pre-1998 comparative negligence law.

- II. WHETHER THE TRIAL COURT MUST INSTRUCT THE JURY ON THE PLAINTIFF'S AND DEFENDANT'S RESPECTIVE DUTIES?

The Trial Court refused to instruct the jury on specific the duties of each party.

- III. WHETHER IMPLIED ASSUMPTION OF THE RISK IS A PROPER AFFIRMATIVE DEFENSE AFTER THE 1998 AMENDMENT TO THE COMPARATIVE NEGLIGENCE STATUTE.

The Trial Court gave assumption of risk instructions.

- IV. WHETHER SOUTH DAKOTA SHOULD REMAIN AS THE SOLE COMPARATIVE NEGLIGENCE JURISDICTION THAT APPLIES AN OBJECTIVE STANDARD UNDER IMPLIED ASSUMPTION OF THE RISK.

The Trial Court gave an objective or constructive assumption of risk instruction.

- V. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE DEFENDANT TO AMEND ITS ANSWER THE DAY BEFORE TRIAL TO PLEAD ASSUMPTION OF RISK.

The Trial Court allowed the Defendant to Amend its Answer the day before trial to plead assumption of risk.

- VI. WHETHER THE TRIAL COURT ERRED IN GIVING AN INSTRUCTION ON ASSUMPTION OF THE RISK.

The Trial Court instructed the jury on assumption of the risk without defining what risks were assumed.

- VII. WHETHER THE TRIAL COURT'S REFUSAL OF PLAINTIFF'S PROPOSED ASSUMPTION OF RISK INSTRUCTION WAS ERROR.

The Trial Court refused the Plaintiff's proposed instruction.

VIII. WHETHER THE TRIAL COURT ERRED IN THE CHOICE OF LAW DETERMINATION?

The Trial Court held that South Dakota law would apply rather than the law of Iowa.

IX. WHETHER THE TRIAL COURT CREATED REVERSIBLE ERROR BY NOT TRANSCRIBING THE OPENING STATEMENT AND IN PERMITTING THE DEFENSE TO ARGUE LAST.

The Trial Court refused to have the court reporter take the opening statements and permitted the defendant to argue last.