

WEDNESDAY, MARCH 26, 2008  
9:00 A.M.

#24596

NO. 1

PROGRESSIVE HALCYON INSURANCE CO.  
and CAROL WELLNITZ,  
Plaintiffs and Appellees,

vs.

ROXANNE PHILIPPI, PERSONAL  
REPRESENTATIVE OF THE SYLVIA  
RUHR ESTATE, DECEASED,  
Defendant and Appellant.

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(FOR APPELLEES)

The Honorable Ronald K. Roehr  
Third Judicial Circuit  
Grant County

(CIV 06-0097)

STATEMENT OF LEGAL ISSUES

- I. WHETHER AN EMPLOYEE LEAVING WORK FOR THE DAY IN AN AUTOMOBILE WHO NEGLIGENTLY INJURES ANOTHER EMPLOYEE IN THE PROCESS IS IMMUNE FROM PERSONAL LIABILITY UNDER SDCL 63-3-2.

The trial court concluded that Wellnitz was acting within the course of her employment based on the "arising out of and in the course of employment" test and, therefore, found that Ruhr's claim against Wellnitz was not allowed under SDCL 63-3-2.

Cases: Donnelly v. Herron, 88 Ohio St.3d 425,  
727 N.E.2d 882 (Ohio 2000)

Melson v. Sebastiano, 822 N.W.S.2d 203  
(N.Y.A.D. 4 Dept. 2006)

Saala v. McFarland, 63 Cal2d 124,  
403 P.2d 400, Cal.Rptr. 144 (Cal. 1965)

Statutes: SDCL 62-1-1(7)  
SDCL 62-3-2  
SDCL 62-4-38