

TUESDAY, MARCH 24, 2009
9:00 A.M.

NO. 1

#24726

SHARON RUSSO, individually and as
Special Administratrix of the Estate of
NATASHA PENDERGRASS, and
JESSICA RUSSO,
Plaintiffs and Appellees,
vs.

TAKATA CORPORATION and
TK HOLDINGS, INC.,
Defendants and Appellants.

Ms. Patricia A. Meyers (FOR APPELLANTS)
Costello, Porter, Hill,
Heisterkamp, Bushnell & Carpenter
Attorneys at Law
PO Box 290
Rapid City SD 57709-0290
Ph 343-2410

Mr. David R. Kelly (FOR APPELLANTS)
Mr. Wayne D. Struble
Bowman & Brooke, LLP
150 South Fifth St., Ste. 3000
Minneapolis MN 55402
Ph (612) 339-8682

Mr. George J. Nelson (FOR APPELLEES)
Abourezk Law Firm, P.C.
Attorneys at Law
PO Box 9460
Rapid City SD 57709-9460
342-0097

Mr. Kevin King (FOR APPELLEES)
Mr. Peter King
Cline, King and King, P.C.
1225 Seventh Street, Ste. B
P.O. Box 250
Columbus IN 47202-0250
Ph (812) 372-0097

The Honorable Janine Kern (CIV 01-1229)
Seventh Judicial Circuit
Pennington County

STATEMENT OF THE ISSUES

1. Does a remark made by a juror during deliberations, based on information that the juror knew before jury selection and that could have been ascertained by reasonable voir dire, constitute "extraneous information" upon which a court can set aside a verdict under SDCL 19-14-7?

Circuit court's answer: Yes.

Most relevant authorities: *Bland v. Davison*, 1997 SD 92,
566 N.W.2d 452 (1997);
Uhlir v. Webb, 1996 SD 5,
541 N.W.2d 738 (1996);
C. Wright & V. Gold, 27 *Federal Practice and
Procedure: Evidence 2d* § 6075 (2007)

2. Does the same presumption of prejudice arising from "extraneous information" brought to the jury's attention in criminal cases also arise in civil cases?

Circuit court's answer: Yes.

Most relevant authorities: *Shamburger v. Behrens*,
418 N.W.2d 299, 303 (S.D. 1988);
Pinckney v. Van Damme, 116 N.C. App. 139,
447 S.E.2d 825, 831 (1994)

3. Did a juror's remark, made during a side conversation between four jurors that lasted no more than five minutes during a six-to-seven hour deliberation, likely prejudice the jury's verdicts against two plaintiffs, even though the remark occurred after the jury had already reached its verdict on one plaintiff's claims and the jury never discussed the remark in reaching its verdicts on either plaintiff's claims?

Circuit court's answer: Yes.

Most relevant authorities: *Buchholz v. State*,
366 N.W.2d 834 (S.D. 1985)
State v. Wright, 1999 S.D. 50,
593 N.W.2d 792 (1999);
Lanza v. Poretti, 537 F. Supp. 777
(E.D. Pa. 1982)