

STATEMENT OF THE ISSUE

1. Are facts of the Defendant's admissions that he did something in relationship to lighting the pilot light on his furnace, or otherwise manipulating his furnace and as a result his furnace "blew up", sufficient material facts to avoid a summary judgment in a case where the resulting explosion and fire burned down a neighbor's house when such admissions by the Defendant are coupled with the Defendant's statements that he should have waited for the local professional propane serviceman to come and look at the furnace?

The Circuit Court held that such facts were not sufficient to allow a jury to return a verdict for Cashman and granted summary judgment to the Defendant.

Most relevant statute: None

Most relevant case: Marts v. Sutton, 275 N.W.2d 357 (SD 1979)

2. Is lighting a propane furnace by a homeowner for the first time on a cold early October morning after the furnace had been shut off all summer because the homeowner was cold an abnormally dangerous activity such that strict liability applies when an explosion results and not only burns down the homeowner's home but also burns down two neighboring homes when the homeowner admits that he should have waited for a local professional serviceman to come and look at the furnace instead of lighting it himself?

The Circuit Court held that lighting a pilot light in these circumstances is not an "abnormally dangerous" activity and that strict liability is not applicable to this case. The Circuit Court granted Defendant's Motion for Summary Judgment on the issue of strict liability.

Most relevant statute: None

Most relevant case: Engherg v. Ford Motor Co., 205 N.W.2d 104 (SD 1973); and Luke v. Deal, 692 N.W.2d 165, 171 (SD 2005)

3. In a case involving the doctrine of *res ipsa loquitur* where all the elements of *res ipsa*

*loquitur* are present, is the Plaintiff required to prove negligence on the part of the Defendant in order to apply the doctrine of *res ipsa loquitur*?

The Circuit Court held that the Plaintiff (Cashman) is required to prove negligence on the part of the Defendant (Van Dyke) and since no negligence was proven, the doctrine of *res ipsa loquitur* is not applicable.

Most relevant statute: None

Most relevant case: Casillas v. Schubauer, 2006 SD 42, ¶24, 714 N.W. 2d 84, 90 and Barger v. Chelpon, 243 N.W. 97, 100 (SD 1932)