

**STATEMENT OF THE ISSUES**

1. Whether Plaintiff's Motion for New Trial should have been granted because the jury did not award any damages for incisional pain.

Plaintiff argued she was entitled to a new trial because the jury did not award damages for incisional pain, but the trial court granted a new trial on other bases. By operation of law, SDCL 15-6-59(g), the trial court denied a new trial for the reasons argued by Plaintiff.

SDCL 15-2-14.1

SDCL 15-6-59(g)

*Truhe v. Turnac Group, LLC*, 1999 SD 118, 599 NW2d 378

2. Whether the trial court abused its discretion in granting a new trial for the reasons set forth in the trial court's letter decision.

Without giving the parties notice and an opportunity to be heard, see SDCL 15-6-59(d), the trial court granted Plaintiff's motion for new trial because the trial court did not find that there was sufficient evidence to support a finding by the jury that the damages Plaintiff was seeking were not caused by Defendant's negligence.

SDCL 15-6-59(d)

*City of Sioux Falls v. Kelley*, 513 NW2d 97 (SD 1994)

*LDL Cattle Co., Inc. v. Guetter*, 1996 SD 22, 544 NW2d 523

*Veith v. O'Brien*, 2007 SD 88, 739 NW2d 15

3. If a new trial is ordered, should the scope be limited to damages for incisional pain and suffering.

The trial court's order granting a new trial does not limit the scope.

SDCL 15-2-14.1

*Reinfeld v. Hutcheson*, 2010 SD 42, 783 NW2d 284

4. Whether the trial court erred by denying Defendant's motion for summary judgment on the grounds that the action was commenced more than two years after the negligence of Defendant's employee?

The trial court denied Defendant's motion for summary judgment on the grounds that there were genuine issues of

material fact as to whether continuing treatment tolled the statute of limitations.

SDCL 15-2-14.1

*Liffengren v. Bendt*, 2000 SD 91, 612 NW2d 629

*Rehm v. Lenz*, 1996 SD 51, 547 NW2d 560

*Casey v. Levine*, 621 NW2d 482 (Neb. 2001)