

STATEMENT OF THE ISSUES

1. ISSUE: Whether the trial court erred in allowing photographs, testimony and argument by legal counsel alleging drainage problems where there was no showing that the area of the accident was involved in the alleged problem?

TRIAL COURT HOLDING: Evidence and argument was allowed.

MOST RELEVANT CASES:

- A. Anderson v. Elgin, Joliet & E. Ry., 227 F.2d 91 (7th Cir.1955).
- B. Lien v. Lien, 2004 SD 8, 674 N.W.2d 816.
- C. SDCL 15-6-32(d) (Rule 32(d)).

2. ISSUE: Whether the trial court erred in failing to grant Judgment as a Matter of Law where Jacobs failed to produce evidence of actual or constructive knowledge of a dangerous condition in the specific area of the accident?

TRAIL COURT HOLDING: Motions denied.

MOST RELEVANT CASES:

- A. Williams v. Grand Trunk R.R., Inc., 352 Fed. Appx. 13, 17 (6th Cir. 2009).
- B. Miller v. Cincinnati, New Orleans & Tex. Pac. Ry. Co., 317 F.2d 693 (6th Cir. 1963).
- C. Borum v. Grand Trunk W. R.R., Inc., 659 F. Supp. 2d 853 (E.D. Mich. 2009).
- D. Raudenbush v. Baltimore & O.R. Co., 160 F.2d 363 (3d Cir.1947).

3. ISSUE: Whether the trial court erred in failing to alternatively grant a new trial where both liability and damages issues were improperly decided as a matter of law?

TRIAL COURT HOLDING: Motion denied.

MOST RELEVANT CASES:

A. Williams v. Grand Trunk R.R., Inc., 352 Fed. Appx. 13, 17 (6th Cir. 2009).

B. Dillard v. Atchison, Topeka & Santa Fe Ry. Co., 882 S.W.2d 211 (Mo. App. 1994).

C. Schmidt v. Forell, 306 N.W.2d 876 (S.D. 1981).

4. ISSUE: Whether the trial court erred in allowing argument and instructing the jury on loss of future earning capacity where there was no evidence that Jacobs was reasonably certain to lose his job or earnings?

TRIAL COURT HOLDING: Argument was allowed and the jury returned a verdict in the exact amount requested by legal counsel.

MOST RELEVANT CASES:

A. Estate of He Crow by He Crow v. Jensen, 494 NW2d 186 (SD 1992).

B. Schmidt v. Forell, 306 N.W.2d 876 (S.D. 1981).

C. Michels v. United States, 815 F. Supp. 1244 (S.D. Iowa 1993) aff'd, 31 F.3d 686 (8th Cir. 1994).

5. ISSUE: Whether the trial court erred in ordering pre-judgment interest from the time of the verdict until entry of judgment?

TRIAL COURT HOLDING: Without a proper motion, the trial court ordered that interest would run from the date of the verdict until judgment was entered.

MOST RELEVANT CASES:

A. Monessen S.W. Ry. Co. v. Morgan, 486 U.S. 330 (1988).

B. Chesapeake & Ohio R. Co. v. Kuhn, 284 U.S. 44 (1931).

STATEMENT OF LEGAL ISSUES²

- I. Was DM&E entitled to exclude all evidence of, and references to, drainage problems in the railyard?
- A. Circuit court decision: No.
- B. Most relevant cases:
1. *Johnson v. Matthew J. Batchelder Co., Inc.*, 2010 S.D. 23, 779 N.W.2d 690 (S.D. 2010)
 2. *DFA Dairy Financing Services, L.P. v. Lawson Special Trust*, 2010 S.D. 34, 781 N.W.2d 664 (S.D. 2010)
 3. *Stormo v. Strong*, 469 N.W.2d 816, 821 (S.D. 1991)
 4. *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, 764 N.W.2d 474 (S.D. 2009)
- C. Most relevant statutory provisions:
1. SDCL 19-15-3
 2. SDCL 19-15-5.1
- II. Is DM&E entitled to judgment as a matter of law on the issue of foreseeability?
- A. Circuit court decision: No.
- B. Most relevant cases:
1. *Kimble v. Pittsburgh & L. E. R. Co.*, 331 F.2d 383 (3rd Cir. 1964)
 2. *Chesapeake & O. Ry. Co. v. Newman*, 243 F.2d 804 (6th Cir. 1957)
 3. *Vonderhaar v. Soo Line R. Co.*, 626 N.W.2d 314 (Wis. App. 2001)
 4. *Alvine Family Ltd. Partnership v. Hagemann*, 2010 S.D. 28, 780 N.W.2d 507 (S.D. 2010).
- III. Is DM&E entitled to a new trial?
- A. Circuit court decision: No.
- B. Most relevant cases:
1. *Alvine Family Ltd. Partnership v. Hagemann*, 2010 S.D. 28, 780 N.W.2d 507 (S.D. 2010)
 2. *Thompson v. Mehlhaff*, 2005 S.D. 69, 698 N.W.2d 512 (S.D. 2005)

IV. Is DM&E entitled to judgment as a matter of law on the issue of loss of future earning capacity?

A. Circuit court decision: No.

B. Most relevant cases:

1. *Alvine Family Ltd. Partnership v. Hagemann*, 2010 S.D. 28, 780 N.W.2d 507 (S.D. 2010)
2. *Martino v. Park Jefferson Racing Ass'n*, 315 N.W.2d 309 (S.D. 1982)
3. *C & W Enterprises, Inc. v. City of Sioux Falls*, 2001 S.D. 132, 635 N.W.2d 752 (S.D. 2001)
4. *Zahn v. Musick*, 2000 S.D. 26, 605 N.W.2d 823 (S.D. 2000)

V. Does interest accrue from the date of the verdict in an action under the Federal Employers' Liability Act brought in South Dakota state court?

A. Circuit court decision: Yes.

B. Most relevant cases:

1. *City of Aberdeen v. Rich*, 2003 S.D. 27, 658 N.W.2d 775 (S.D. 2003)
2. *Monessen Southwestern Ry. Co. v. Morgan*, 486 U.S. 330 (1988).
3. *Chidel v. Hubbard*, 840 A.2d 689 (D.C. 2004)

C. Most relevant statutory provisions:

1. SDCL 15-6-62(b)
2. SDCL 15-16-3

VI. Is DM&E entitled to a set-off upon the judgment?

A. Circuit court decision: Yes.

B. Most relevant case: *Clark v. Burlington Northern, Inc.*, 726 F.2d 448, 451 (8th Cir. 1984)

C. Most relevant statutory provision: 45 U.S.C. §55