

SOUTH DAKOTA

LEGAL NOTES

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Mike Henderson Joins Swier Law Firm

Swier Law Firm, Prof. LLC is pleased to announce the expansion of its nationally recognized legal practice with the addition of Mike Henderson.

Mike will lead the law firm's Appellate Law Practice Group and focus his practice on complex legal research and writing. Mike has extensive experience and has been involved in numerous appeals before the South Dakota Supreme Court and the United States Court of Appeals for the Eighth Circuit.

Mike grew up on what is now a fifth generation family ranch in northwestern South Dakota. He graduated with honors from the University of South Dakota School of Law where he served on the Board of Editors for the South Dakota Law Review. Following law school, Mike served as a judicial clerk for the Honorable Roger L. Wollman of the United States Court of Appeals for the Eighth Circuit. Upon completing his clerkship, Mike joined a Sioux Falls law firm where he practiced for several years.



"Mike Henderson brings a keen analytic mind and an excellent understanding of appellate law to our firm's practice," said Scott Swier. "Mike is one of the foremost appellate attorneys in South Dakota and we are thrilled to welcome a lawyer of his caliber to our law firm."



South Dakota Agricultural Law: Knowing the Laws that Impact Your Farm and Ranch

The agricultural industry is constantly evolving. Farmers and ranchers need to meet these changes in a increasingly regulated environment. The Environmental Protection Agency (EPA) has recently published a series of materials outlining numerous laws and regulations that impact South Dakota's farming and ranching operations. These tools provide a valuable resource to producers as they try to comply with the numerous laws and regulations related to their agricultural operation.

Read more at: <http://www.swierlaw.com/news/south-dakota-agricultural-law-knowing-the-laws-that-impact-your-farm-and-ranch.cfm>



Q: In South Dakota, what are the requirements that must be met before completing an adoption?

A: Under South Dakota law, there are several requirements that must be met before a court can approve an adoption. These requirements include (1) a home study report prepared by a licensed child placement agency, the Department of Social Services, or a certified independent social worker; (2) you must be a resident of South Dakota; (3) the child must reside with you at least six months prior to the adoption; (4) you must pass a child abuse registry check; (5) your criminal history, if any, will be reviewed; (6) any child support obligations that you may have will be reviewed to determine if there are outstanding amounts due; (7) you must be at least ten years older than the minor child you wish to adopt; (8) a child over the age of twelve years old must consent to the adoption; and (9) a married person cannot adopt a child without the consent of their spouse.

South Dakota Agricultural Law - Farm Bill Crop Program Signup Deadline Approaching

Swier Law Firm reminds South Dakota farmers and landowners they have until the end of March to make their crop program choices under the 2014 farm bill.

The choices are between the Price Loss Coverage and Agricultural Risk Coverage programs. These choices need thoughtful consideration because they'll last for five years, and there are no obvious answers about what's best for one farm versus another.

Read more at <http://www.agweb.com/article/-march-31-farm-bill-crop-program-signup-deadline-approaching--NAA-associated-press/>





South Dakota Business Litigation - Supreme Court Decides Worker's Compensation Case

On March 4, 2015 the South Dakota Supreme Court denied a worker's compensation claim after a one-car automobile accident in *Terveen v. SD Department of Transportation*.

Aaron Terveen was a transportation technician for the South Dakota Department of Transportation (DOT) working out of Belle Fourche. As a journey transportation technician, his job required him to travel to locations outside of Belle Fourche, but he usually checked in at the office when he returned from a work related trip. Terveen also occasionally worked for Tom Janklow by repossessing vehicles. The DOT did not have a policy that prohibited employees from making stops along their travel routes and allowed its employees to engage in personal activities during their work related activities.

On November 16, 2011, Terveen was returning from a work related trip from Yankton and sent a text to his wife at 6:28 p.m. that he would meet her for dinner in Belle Fourche across the road from the DOT shop within fifteen minutes. However, before he could check into the DOT office Terveen was injured in a one-car accident between 6:30 p.m. and 7:00 p.m.

The site of the accident was Prairie Hills Road, a dead end road approximately two-and-a-half miles from the DOT shop.

Terveen's personal Blackberry was recovered from the accident. At the time of its recovery, it was on an internet website showing a repossession order for a vehicle located on Prairie Hills Road and showed that Terveen spoke to Janklow at 5:48 p.m. The record reflected that Terveen and Janklow did not discuss any aspect of repossession business during the 5:48 p.m. call. To repossess the vehicle, Terveen would have required an order for repossession and a truck from Janklow's office, neither of which Terveen had at the time of the accident. No vehicles associated with the account Terveen accessed had been repossessed. Due to the accident, Terveen had injuries and applied for worker's compensation benefits with the Department of Labor (DOL). The DOL determined Terveen sustained an injury arising out of and in the course of his employment. The DOT appealed the decision to the circuit court which reversed the DOL's decision and dismissed Terveen's claim.

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On appeal, the South Dakota Supreme Court analyzed the issue of whether Terveen's accident and injuries arose out of and in the course of his DOT employment. First, the Court addressed the accident and determined that Terveen was not engaging in work related travel at the time because his DOT employment did not compel him to travel down Prairie Hills Road. Additionally, the DOT's approved deviations did not authorize trips to further employment for another employer. The Court also determined that the accident and injuries were not in the course of Terveen's DOT employment even though he was considered "an 'outside employee' due to his employment requiring him to travel away from his home a majority of the time." The Court found that Terveen's "activity on Prairie Hills Road was not naturally related because he was supposed to return to Belle Fourche, not meander down a dead-end side road for no apparent purpose." Finally, because Terveen could not explain or offer proof of why he was on Prairie Hills Road at the time of the accident there was no record that the trip on Prairie Hills Roads was "either naturally or incidentally related to his employment or expressly or impliedly authorized by the DOT."

Next, the Court addressed the issue of compensation of the injuries based on Terveen's deviation. The Court determined that Terveen's Prairie Hills Road deviation without a defined reason for personal

comfort or explanation was a substantial deviation, which removed him from being within the course of his employment. The Court then examined when, if at all, Terveen ever resumed acting within the course of his employment. The Court ultimately adopted the majority rule for side-trips that "require[s] an employee, who has made a personal side-trip, to 'get back on the beam' before being deemed to have resumed the business trip." And because Terveen's trip on Prairie Hills Road was a severable side-trip, he failed to resume acting in the course of his employment. Therefore, the Court affirmed the circuit court's denial of worker's compensation coverage.



Scott Swier



Brooke Schloss



Robert Burns



Jake Fischer



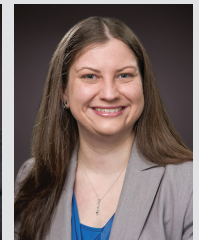
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