

#2

## EXCERPT FROM JUDGE SCHREIER'S 2006 *Sheesley v. The Cessna Aircraft Co*

The court concurs with Judge Porter's prediction on how the South Dakota Supreme Court would rule. This comports with the plain language of § 21-5-7, which only permits recovery of "damages ... proportionate to the pecuniary injury" experienced by the plaintiffs. Based on this language in a previous version of the statute, the South Dakota Supreme Court explicitly stated that "recovery for wrongful death is limited to actual or compensatory damages." *Hodkinson v. Parker*, 70 S.D. 272, 16 N.W.2d 924, 926 (S.D.1944). Instead of compensating for an injury, punitive damages punish or deter defendants' conduct. *See Olson-Roti*, 653 N.W.2d at 260-61 ("Punitive damages in South Dakota are not designed to compensate victims."). Accordingly, awarding punitive damages in a wrongful death claim contradicts the plain meaning of § 21-5-7.

Additionally, the amendment history of § 21-5-7 indicates that the South Dakota Legislature explicitly chose to prohibit recovery of punitive damages in a wrongful death action. The first version of the South Dakota wrongful death statute "allowed a claim for punitive damages for a wrongful death." *Anderson v. Lale*, 88 S.D. 111, 216 N.W.2d 152, 155 (S.D.1974). Then, in 1887, the legislature amended the wrongful death statute by removing the word punitive from the statute. *Id.* In 1895, the South Dakota Supreme Court interpreted this revision "as showing the intention of the legislature to change the rule allowing a recovery for 'punitive,' exemplary, or vindictive damages, and to limit parties to a recovery for actual or compensatory damages only." *Smith v. Chicago, M. & St. P. Ry. Co.*, 6 S.D. 583, 62 N.W. 967, 968 (S.D.1895). Notably, the court in *Smith* interpreted the wrongful death statute to only permit recovery of pecuniary loss. *See id.*; *see also Anderson*, 216 N.W.2d at 155. In 1909, the legislature "codified the term pecuniary injury" as the damages available under the wrongful death statute. *Anderson*, 216 N.W.2d at 155.

Accordingly, the 1909 legislature explicitly adopted the *Smith* court's construction of the statute, which only permitted recovery of compensatory damages. Then, in 1947, the legislature again amended the statute by replacing the term "pecuniary" with the word "all" as the modifier of recoverable damages. *Id.* But in 1967, the legislature amended the statute for the final time by replacing the word "all" with "pecuniary," thereby reverting to the pre-1947 statute. This amendment exhibited the legislature's intent to revert to the *Smith* court's limitation on recoverable damages, namely compensatory or actual damages. *See Anderson*, 216 N.W.2d at 158 (noting presumption that Legislature is aware of judicial construction of a statute when reenacting the statute).

Moreover, the South Dakota Supreme Court has indicated that recovery in a wrongful death action is limited to the remedy provided by § 21-3-2. *See Hoekstra v. Helgeland*, 78 S.D. 82, 98 N.W.2d 669, 686 (S.D.1959). In *Hoekstra*, the plaintiff argued that she was denied full recovery because the wrongful death statute only permitted recovery of "damages not exceeding in any case \$20,000 as [the jury]

may think proportionate to all injury resulting from such death....” *Id.* at 684. The court stated that plaintiff’s damages were limited to the recovery provided by the wrongful death statute, including the statute’s \$20,000 statutory cap. *See id.*; *see also Hodkinson*, 16 N.W.2d at 926. Accordingly, the court finds that punitive damages are not available in a wrongful death action in South Dakota.

*Sheesley v. The Cessna Aircraft Co.*, No. CIV. 02-4185-KES, 2006 WL 1084103, at \*26–27 (D.S.D. Apr. 20, 2006).