2-16-2010

Tiegs v. Robertson Appellant's Reply Brief Dckt. 35921

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRUCE TIEGS, individually and as co-personal, representative of the Estate of Kenneth Tiegs; STEVEN TIEGS; and SUSAN HUNTER, individually and as co-personal representative of the Estate of Kenneth Tiegs, and K.P. INC., an Idaho Corporation, Plaintiffs-Respondents, v. DUSTIN M. KUKLA, Defendant. And *DARRELL L. ROBERTSON,* Defendant-Appellant.	Supreme Court Docket No.: 35921
KENNETH TIEGS AND SONS, INC., as subrogee of UNIGARD INSURANCE, Plaintiff-Respondent, *DUSTIN M. KUKLA,* Defendant, And DARRELL L. ROBERTSON, Defendant-Appellant.	

REPLY BRIEF

Appeal from the District Court of the Third Judicial District in and for the County of Canyon

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I. INTRODUCTION

Idaho Appellate Rule 35(c) states in pertinent part, "The appellant or cross-appellant may file a brief in reply to the brief of the respondent or cross-respondent within the time limit specified by Idaho Appellate Rule 34(c) which may contain additional argument in rebuttal to the contentions of the respondent."

This Reply Brief contains "additional argument in rebuttal to the contentions" of the Respondents.

This Reply Brief is necessarily limited to the current Record on Appeal as of the filing deadline for this brief of February 16, 2010. Prior to the filing deadline, Appellant's filed a motion to augment the record with additional exhibits and transcripts. A decision on the motion to augment will not occur until after the deadline for filing the brief of February 16, 2010. Any briefing dealing with any documents or transcripts augmented to the record pursuant to Appellant's motion will be presented in supplemental briefing if allowed by this Court.

The facts presented and course of proceedings in this matter set forth in Appellant's Brief were not disputed by Respondent. Respondent's Brief, p. 1.

II. ARGUMENT

The Supreme Court's review of the District Court's Decision on Defendant Robertson's Motion for Summary Judgment is appropriate because it effectively granted to Respondent partial summary judgment finding that I.C. § 49-2417 applies to implements of husbandry and that I.C. § 49-916 and I.C. § 49-903 require owners of implements of husbandry to have operational lighting systems at all times. This Court should reverse the District Court's decision with regard to those issues.

The District Court abused its discretion in failing to uphold the jury's answers to the specific interrogatories on the Special Verdict Form by granting a new trial. This Court should reverse the District Court's decision granting a new trial.

A) The District Court Erred in Deciding That Imputed Liability Applied to Implements of Husbandry.

1. Standard of Review

The proper standard of review in this matter is that which applies to District Court decisions granting motions for summary judgment. This standard was set forth in Appellant's Brief. Appellant's Brief, pp. 8-9.

This Court has held, "Summary judgment may be rendered for any party, not just the moving party, and on any or all of the causes of action involved, under the rules of civil procedure." *Brummett v. Ediger*, 106 Idaho 724, 726, 682 P.2d 1271, 1273 (1984). This ruling was reiterated in *Harwood v. Talbert*, 136 Idaho 672, 39 P.3d 612 (2001). In *Harwood*, this Court expanded upon the ruling set forth in *Brummet*, by stating: "The district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court. A motion for summary judgment allows the court to rule on the issues placed before it as a matter of law; the moving party runs the risk that the court will find against it, as in this case." *Id.* at 677, 39 P.3d at 617.

The District Court in this matter granted to the non-moving party, Respondent, partial summary judgment on the allegation of imputed liability under I.C. § 49-2417. Appellant brought the motion for summary judgment arguing that I.C. § 49-2417 did not apply to the implement of husbandry owned by Appellant. R. 482, Defendant Roberton's Memorandum of Law in Support of Motion for Summary Judgment, Lodged 2-8-06 at 12. This issue involved the

undisputed fact that the Appellant's vehicles involved in the accident were a tractor pulling an implement of husbandry. Due to the relevant facts being undisputed and admitted, the District Court simply ruled upon the issue in favor of Respondent.

The District Court's ruling did not simply deny Appellant's motion for summary judgment based upon their being a genuine issue of fact, but ruled positively, "that an implement of husbandry (i.e., a tractor pulling a hay baler) constitutes a motor vehicle for purposes of Idaho Code § 49-2417. R. p. 444. Regarding this ruling, the District Court did not state that any further fact-finding was necessary. The effect of the District Court's decision is that Respondent was granted partial summary judgment on the issue of imputed liability.

The Respondents cited authority in the Respondents' Brief regarding appealing denials of motions for summary judgment. Respondents' Brief, pp. 3-5. Appellant does not dispute that these cases are applicable to circumstances where a district court has only denied a motion for summary judgment finding that the matter must proceed to trial in order to have a fact-finder determine the outcome of the issue. These cases are not applicable to instances where a district court has ruled in favor of a non-moving party essentially granting partial summary judgment in their favor.

Unlike the case of *Garcia v.* Windley, 144 Idaho 539, 164 P.3d 819 (2007) relied upon by Respondents, Appellant is requesting that this Court rule on those issues in the District Court's decision where it effectively grants summary judgment in favor of Respondent and not asking this Court to carve out an exception to the rule that denials of motions for summary judgment cannot be reviewed on appeal. As established above, the District Court in this matter granted partial summary judgment in favor of Respondents in regard to the issue of imputed liability. Therefore, the issue of the applicability of I.C. § 49-2417 to implements of husbandry is

appealable to this Court under the standard of review governing the review of a district court's granting of summary judgment. This standard of review was set forth in Appellant's Brief and was not disputed by Respondents. Appellant's Brief, pp. 8-9.

2. I.C. § 49-2417 (1) Does Not Impute Liability upon the Owner of an Implement of Husbandry

The following recitation of authority was originally cited in the Appellant's Brief, but is reproduced for ease of reference. The construction of a legislative act presents a pure question of law for this Court to decide. *Crawford v. Dept. of Corrections*, 133 Idaho 633, 635, 991 P.2d 358, 360 (1999). Courts also exercise free review over the interpretation of statutes. *Adamson v. Blanchard*, 133 Idaho 602, 605, 990 P.2d 1213, 1216, (1999).

"Courts are empowered to resolve ambiguities in statutes by ascertaining and giving effect to legislative intent." *Easley v. Lee*, 111 Idaho 115, 118, 721 P.2d 215, 218 (1986) citing: *Nampa Lodge No. 1389 v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951). "The act should be construed in its entirety and as a whole for the purpose of ascertaining the legislative intent, and where different sections reflect light upon each other they are regarded as *in pari materia*." *Id.*

The Idaho Supreme Court has also held, "'all parts of a statute should be given meaning,' and the Court 'will construe a statute so that effect is given to its provisions, and no part is rendered superfluous or insignificant.'" *Moreland v. Adams*, 143 Idaho 687, 690, 152 P.3d 558, 561 (2007) citing: *Idaho Cardiology Associates, P.A. v. Idaho Physicians Network, Inc.*, 141 Idaho 223, 226, 108 P.3d 370, 373 (2005).

The relevant statutes in this matter are all found in the *Idaho Motor Vehicles Act* (the "Act").

Idaho Code § 49-2417(1) provides:

> Every owner of a *motor vehicle* is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of his *motor vehicle*, in the business of the owner or otherwise, by any person using or operating the vehicle with the permission, express implied, of the owner, and the negligence of the person shall be imputed to the owner for all purposes of civil damages. (Emphasis added).

Idaho Code § 49-2417(1) by its plain language applies only to "motor vehicles" as defined in this statute and not to the tractor and baler that are at issue in this lawsuit. A motor vehicle is defined under I.C. § 49-123 (g) as:

> Every vehicle which is self propelled and every vehicle which is propelled by electric power obtained by overhead trolley wires but not operated upon rails, except vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs. 49-123(g)

Pursuant to Idaho Code § 49-110(2), the applicable definitions section of the Act, a farm tractor when drawing an implement of husbandry such as a baler is to be defined as an implement of husbandry for purposes of the Act:

> "Implements of husbandry" means every vehicle including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicators, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. "Implements of husbandry" do not include semitrailers, nor do they include *motor vehicles* or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations. (Emphasis added).

This provision specifically states that implements of husbandry do not include motor vehicles. Because the tractor and baler are defined as an implement of husbandry and not as a motor vehicle for purposes of the Act, the legislature has through its definitions exempted implements of husbandry from the imputed liability provision of Idaho Code § 49-2417 (1). Where, as here, Idaho Code § 49-2417 (1) specifically applies only to motor vehicles, implements of husbandry are excluded from imputed liability pursuant to this provision of the

Act. Under the rule of statutory interpretation *expressio unius est exclusio alterius*, as well as the plain language of the statutes themselves, Idaho Code § 49-2417 (1) is inapplicable to the case at bar. *See Poison Creek Publishing, Inc., v. Central Idaho Publishing, Inc.*, 134 Idaho 426, 3 P.3d 1254 (Ct. App. 2000).

The District Court in ruling that I.C. § 49-2417 includes the tractor and hay baler at issue presumes that a hay baler becomes a motor vehicle simply because it is attached to a tractor. The District Court essentially admitted that many, if not most implements of husbandry would be excluded from I.C. § 49-2417. The District Court stated that, "To be sure, hay balers do not constitute motor vehicles." R., p. 451. Here the District Court essentially admits that despite the Idaho Legislature not specifically excluding implements of husbandry from I.C. § 49-2417, it does exclude hay balers and any other implements of husbandry not self-propelled.

The District Court and Respondents fail to address the fact that it was the hay baler that the deceased's vehicle impacted, not the tractor. The assumption made by the District Court and Respondents is that once a hay baler is connected to a tractor, the hay baler becomes a motor vehicle under I.C. § 49-123 (g). Rather, the Idaho Legislature took the steps necessary to specify that when a tractor is attached to a hay baler it becomes an implement of husbandry, not that the hay baler becomes a motor vehicle. I.C. § 49-110(2). By defining implements of husbandry in I.C. § 49-110(2), the Idaho Legislature shows its intent is to not treat implements of husbandry as motor vehicles. Idaho Code § 49-2417 does not apply to implements of husbandry, because the Idaho Legislature does not treat implements of husbandry as motor vehicles. The Legislature's intent then is that a hay baler should not be treated differently under the Act simply because it is attached to a tractor. Interpreting I.C. § 49-2417 to apply to this hay baler would be going against the plain intent of the Legislature.

Based upon the plain intent of the Idaho Legislature, Appellant's request that this Court reverse the District Court's decision and rule that I.C. § 49-2417 does not apply to hay balers even when they are attached to tractors.

B. The District Court Erred in Deciding that I.C. §§ 49-902, 903 and 916 Requires Implements of Husbandry to Have an Operational Lighting System at All Times.

1. Standard of Review

As with the District Court's decision regarding imputed liability under I.C. § 49-2417, the District Court's effectively granted partial summary judgment to Respondent on the issue whether I.C. §§ 49-902, 903 and 916 require implements of husbandry to have an operational lighting system at all times. Pursuant to the argument above, the standard of review on appeal for this issue is the standard applied to a district court's decision granting summary judgment.

2. Idaho Code §§ 49-902, 903 and 916 do not Require Implements of Husbandry to Have Operational Lighting Systems at all Times

This inquiry also involves the interpretation of Idaho statutes and the previously provided case citations regarding statutory interpretation apply in this instance and throughout our brief.

Respondents' First Amended Complaint alleges negligence *per se* against Appellant. Respondents' allegation of negligence *per se* in this case is predicated on the improper interpretation of I.C. § 49-916. In support of their claim for negligence *per se* against Appellant, Respondents alleged that "[b]y allowing Mr. Dustin Kukla to operate the tractor and baler on a public road after sunset without visible tail lights or reflectors, Appellate Robertson was in direct violation of the provisions of Idaho Code § 49-916." R, p. 42, Plaintiff's First Amended Complaint, ¶ 37.

The relevant provisions relating to this question are Idaho Code §§ 49-902(1) and (3); 49-903; 49-916(3) and (4). These code sections were set forth in the Appellant's Brief in full, but are reproduced in this brief for convenience. Idaho Code § 49-902(1) and (3) state (Emphasis added):

> (1) It shall be unlawful for any person to drive, or move, or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in an unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with the lamps and other requirements in proper condition and adjustment, as required by the provisions of this chapter, or which is equipped in any manner in violation of the provisions of this chapter.
>
> ...
>
> (3) The provisions of this chapter, with respect to equipment on vehicles, *shall not apply* to implements of husbandry, road machinery, road rollers, farm tractors or slow moving vehicles except as otherwise specifically made applicable.

Idaho Code § 49-903 states:

> Every vehicle upon a highway at any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as here respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as stated herein.

Idaho Code § 49-916(3) and (4) state:

> (3) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall at all times specified in section 49-903, Idaho Code, be equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of sections 49-922 or 49-924, Idaho Code, respectively or, as an alternative, section 49-926, Idaho Code, and two (2) red lamps visible from a distance of not less than five hundred (500) feet to the rear, or in the alternative, one (1) red lamp visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible from a distance of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps. Red lamps or reflectors shall be mounted in the rear of the farm tractor or self-propelled implement of husbandry to indicate as nearly as practicable the extreme left and right projections of the vehicle on the highway.

> (4) The farm tractor element of every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system shall at all times specified in section 49-903, Idaho Code, be equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of sections 49-922, 49-924, or 49-926, Idaho Code.

These provisions of the Idaho Code prohibit the operation of an implement of husbandry on a public roadway between "sunset" and "sunrise" and "at any other time when there is not sufficient light" without the equipment required by I.C. § 49-916. This standard applies to any person operating the relevant machinery.

The statutory duty of an owner of an implement of husbandry is further limited by I.C. § 49-902(1) at times when they are not the operator of the vehicle, by requiring that there be a showing the owner "cause[d] or knowingly permit[ted] to be driven" a vehicle that is in violation of the specific requirements of the chapter. I.C. § 49-902(1)

The question of whether a statute imposes a duty upon a particular person or entity is a question of law which the Court freely reviews. *Mugavero v. A-1 Auto Sales, Inc.*, 130 Idaho 554, 557, 954 P.2d 141, 154 (Ct. App. 1997). Therefore, in reviewing Respondent's negligence *per se* claim, this Court may make its own determination for purposes of appeal whether the statute cited by Respondents establishes a duty on behalf of Appellant as a matter of law.

The Idaho Legislature has also created a separate standard for implements of husbandry than for other vehicles. The District Court erred by essentially finding that Appellant had a duty to ensure that his implements of husbandry had operational lighting systems at all times. The District Court began by setting forth the appropriate statutes, but misapplied the holding of *State v. Evans*, 134 Idaho 560, 6 P.3d 416 (Ct.App. 2000) in ruling that, "if the lighting equipment is not operational as required by Idaho Code § 49-916 with regard to farm equipment, one simply does not move it on a highway. To do so, violates the plain provisions of statutory law, which

Defendant Robertson allowed with Dustin Kukla. R, p. 441. As discussed above, the above-quoted portion shows that the District Court granted partial summary judgment in favor of Respondent by ruling that Appellant, Defendant Robertson, violated I.C. § 49-916.

The District Court erred in it analysis because the *Evans* case is not directly applicable in this matter because it did not involve an implement of husbandry which is treated differently than a normal vehicle under I.C. § 49-902. As set forth in more detail in the Appellant's Brief, the *Evans* case deals with an individual driving a car not an implement of husbandry. Appellant's Brief, pp. 16-17. The Court of Appeals in *Evans* did not address the difference in the statutory language and differing requirements between I.C. § 49-905 and I.C. § 49-916.

The District Court also failed to analyze the plain language of I.C. § 49-902(3) and I.C. § 49-916 in applying the holding of *Evans* to implements of husbandry, including Appellant's hay baler. The District Court and Respondents overlook the fact that Idaho Code § 49-902(1) must be read in conjunction with the plaint language of I.C. § 49-902(3) which states that, "The provisions of this chapter (including I.C. § 49-902(1)), with respect to equipment on vehicles, *shall not apply* to implements of husbandry ... except as otherwise specifically made applicable." I.C. § 49-902(3) (Emphasis added). The Idaho Legislature essentially stated that I.C. § 49-902(1) has no applicability to implements of husbandry unless some provision specifically makes it applicable. The Legislature's intent is to treat implements of husbandry different from other motor vehicles.

The equipment rules for implements of husbandry are specifically set forth in I.C. § 49-916. Unlike I.C. § 49-905 that was interpreted in *Evans*, I.C. § 49-916 contains the following language preceding the equipment requirements in each of its major subparagraphs, "shall at all times specified in section 49-903". Idaho Code § 49-916 limits the equipment requirements to

the times set forth in I.C. § 49-903, not the times set forth in I.C. § 49-902(1). The inclusion of the specific reference to I.C. § 49-903 in I.C. § 49-916 is especially revealing considering the omission of any reference to I.C. § 49-903 in I.C. §§ 49-905, 906, 907, 909 and 915.

The District Court and Respondents analyze I.C. § 49-902(1); I.C. § 49-903 and I.C. § 49-916 as if the language in them and how they relate to one another were ambiguous. They both attempt to interpret the Idaho Legislature's intent by using the rule of statutory construction *in para materia.* The application of this and other rules of statutory construction is only appropriate if the legislative intent cannot be discerned by the plain meaning of the language of the statutes. Unlike I.C. § 49-905 interpreted in *Evans*, I.C. § 49-916 by plain language limits its requirements to the times set forth in I.C. § 49-903. To interpret the requirements of I.C. § 49-916 to be required at all times would be to impermissibly render meaningless the limiting phrase in I.C. § 49-916, "shall at all times specified in section 49-903".

The District Court's decision that lighting requirements of I.C. § 49-916 are required at all times and that Appellant violated this statute should be reversed.

C) The Jury's Verdict that Appellate Robertson's Actions were not a Proximate Cause of the Respondents' Injuries Should be Upheld?

1. Standard of Review

The Supreme Court has stated that: "This Court reviews the grant of a motion for a new trial based upon I.R.C.P. 59(a)(6) under an abuse of discretion standard." *Warren v. Sharp*, 139 Idaho 599, 603, 83 P.3d 773, 777 (2003); quoting: *Sheridan v. St. Lukes Reg'l Med. Ctr.*, 135 Idaho 775, 781, 25 P.3d 88, 94 (2001).

"To determine whether a trial court has abused its discretion, this Court considers whether it correctly perceived the issue as discretionary, whether it acted within the boundaries

of its discretion and consistently with applicable legal standards, and whether it reached its decision by an exercise of reason." *Perry v. Magic Valley Regional Medical Center*, 134 Idaho 46, 51, 995 P.2d 816, 821 (2000); citing: *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 40, 981 P.2d 1146, 1150 (1999).

When faced with arguably inconsistent special jury verdicts, the trial court "must look at the evidence and the instructions given and see if there is a view of the case that makes the jury's answer consistent. If there is this consistent view, the court must resolve the case in that way." *Cook v. State, Dept. of Transp.* 133 Idaho 288, 985 P.2d 1150, (Idaho 1999), *Griffith v. Latham Motors, Inc.*, 128 Idaho 356, 360, 913 P.2d 572, 576 (1996).

2. The District Court Failed to Act Within Its Discretion

The District Court's order is devoid of any discussion of its discretion or the legal standards it is to apply in reviewing a potentially inconsistent special verdict. R., pp. 453-455. At the hearing on the motion for new trial the District Court stated:

> It is a motion for a new trial, which is a little bit different than when you renew a motion for judgment notwithstanding the verdict, because what it does is it calls upon me to weigh the evidence, and determine, one, whether the verdict was against – my view – by the clear weight of the evidence.
>
> And then, secondly whether a new trial would produce a different result.
>
> So, essentially, that's my mission, because I have a broader discretion than, say, a motion for a directed verdict or nlv – that's a law thing. But, this is a "weight" thing.
>
> So, with this weighty issue, Mr. Nicholson, it's your motion, I will allow you to go first.

Tr. Plaintiff's Motion for New Trial – September 15, 2008, p. 19, L. 11-23. Here the District Court states that he has broad discretion and states two determinations he has to make in regard to the motion for new trial. Namely, whether the verdict was against the weight of the evidence and whether a new trial would produce a different result. These standards are the standards for

analyzing a motion for new trial under IRCP 59(a)(6). In order to grant a new trial pursuant to IRCP 59(a)(6) on the ground of insufficiency of the evidence to justify the verdict or other decision, or that it is against the law, the trial court must determine both (1) the jury verdict is against the clear weight of the evidence, and (2) a new trial would produce a different result. *City of McCall v. Seubert*, 142 Idaho 580, 130 P.3d 1118, (Idaho 2006); *Heitz v. Carroll*, 117 Idaho 373, 788 P.2d 188 (1990.

Despite the District Court's statements at the hearing, the District Court's Order on Motion for New Trial does not adequately address these two questions. The District Court does not comment on whether a new trial would produce a different result and does not state that the verdict was against the weight of the evidence. It is apparent that there is a discrepancy between the District Court's statement regarding its discretion at the hearing and its treatment of the matter in its order. As pointed out by Respondent, the District Court is granting the motion for new trial pursuant to IRCP 49(b).

Further, the District Court did not cite to any applicable legal standards that would apply to its discretion. Most importantly, the District Court did not acknowledge the standard set forth above which is that when faced with arguably inconsistent special jury verdicts, the trial court "must look at the evidence and the instructions given and see if there is a view of the case that makes the jury's answer consistent. If there is this consistent view, the court must resolve the case in that way." *Cook v. State, Dept. of Transp.* 133 Idaho 288, 985 P.2d 1150, (Idaho 1999), *Griffith v. Latham Motors, Inc.*, 128 Idaho 356, 360, 913 P.2d 572, 576 (1996). In regard to this standard, the District Court apparently did not consider the direction in IRCP 49(b) for dealing with inconsistencies in a special verdict form that, "When the answers are consistent with each other but one or more is

inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict ...." IRCP 49(b).

The District Court failed to acknowledge certain standards when considering the motion for new trial and did not adequately address the standards that it did reference at the hearing in the order. The District Court abused its discretion in granting the motion for new trial.

The jury consistently found that the actions of Appellant were not a proximate cause of Respondent's damages. The special verdict form instructed the jury that if they answered yes to the questions regarding proximate cause as to any of the claims for any of the parties, then they were to proceed to Question 10 pertaining to fault. Question 10 then instructed the jury to apportion fault. The jury is then advised that the sum must equal 100%.

In the present case, it is clear that the jury did not intend to find that the actions of Appellant Robertson were the proximate cause of Respondent's damages. Each time the question was asked with respect to proximate cause as to Appellant Robertson, the jury answered "No." Neither the District Court nor Respondent state or argue that the jury's responses that Appellant was not a proximate cause of the damages went against the weight of the evidence presented at trial. Similarly, neither the District Court nor Respondent argue that another jury would find differently than the present jury found with regard to the special interrogatories regarding negligence and proximate cause.

The sole dispute is the contention that a special verdict form that has responses to specific questions which are inconsistent with the general verdict are against the law. As stated in IRCP 49(b), special verdict forms that have inconsistencies between the answers to the interrogatories and the general verdict are not unlawful, but can be remedied by having the district court enter judgment in accordance with the specific answers.

A jury verdict which does not violate Idaho law should be cast aside so lightly. Such a result would undermine the principle of the finality of trials. If at all possible, the jury's verdict should be upheld. The District Court's failure to recognize the legal standards for deciding these issues establishes that it abused its discretion.

Appellant therefore requests that this Court find that the jury's verdict was not inconsistent and reverse the District Court's decision granting Respondent's motion for new trial.

III. CONCLUSION

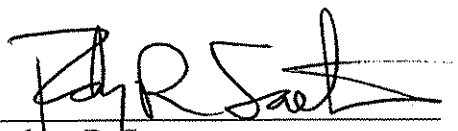
Based upon the facts presented and the record on appeal, this Court should reverse the District Court's rulings on (1) Appellant's motion for summary judgment and (2) Respondents' motion for new trial.

The District Court misinterpreted case law and statutes in finding that owners of implements of husbandry are subject to imputed liability under I.C. § 49-2417. The District Court also failed to properly analyze I.C. §§ 49-902(1) and (3); 49-903 and 49-916, in finding that implements of husbandry are required to have the lighting requirements of I.C. § 49-916 at all times.

The District Court abused its discretion in granting the motion for new trial and should be reversed.

Respectfully submitted this 16th day of February 2010.

SAETRUM LAW OFFICES

By 

Rodney R. Saetrum
Attorneys for Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of February 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below and addressed to:

Eric S. Rossman
Erica S. Phillips
ROSSMAN LAW GROUP, PLLC
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_____ U.S. Mail
__✓__ Hand Delivery
_____ Overnight Mail
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Rodney R. Saetrum