

S.D. Court:

Loan Lawsuit Can Be Class Action

BY CHET BROKAW
Associated Press

PIERRE — A Rapid City couple's lawsuit alleging a credit union and an insurance company improperly raised the rates for insurance that covers loan payments if borrowers become disabled can be handled as a class action, the South Dakota Supreme Court ruled Thursday.

A trial judge had ruled the lawsuit against the Black Hills Federal Credit Union of Rapid City and CUNA Mutual Insurance Society could not be handled as a class action, but the state's high court said there's no evidence that handling the dispute as a class action would harm the interests of the other borrowers. Issues related to whether borrowers waited too long to sue also can be handled in a class action, the justices said.

A lawyer for the couple bringing the lawsuit has argued that the case should be handled as a class action because it would be impractical for 4,461 borrowers to file individual lawsuits. Attorneys for

the credit union and insurance company have contended that the dispute cannot be tried as a class action because each borrower would have to testify about whether each had waited too long to sue.

The lawsuit alleges that the credit union and insurance company improperly changed the terms and rates for disability insurance without giving borrowers sufficient notice.

Rapid City lawyer James Leach, who's representing Ed and Kathy Thurman, the couple who filed the lawsuit, said Thursday he believes more than 4,000 borrowers were cheated by the credit union and insurance company.

"It's appropriate that this can proceed as a class action so they can recover their losses," Leach said.

Lawyers for the credit union and insurance company did not immediately return phone calls seeking comment.

Court documents indicate that people who borrowed money and bought the disability insurance before July 1, 1999, had been told they would be notified before any premium rate was increased. The law-

suit alleges a quarterly advertising newsletter sent to credit union members contained a notice that said the insurance terms would change and premium rates would increase on July 1, 1999, but the suit says few people would be able to understand that the change would double the amount they would pay for the insurance.

The Thurmans discovered the change in 2009 when they decided to pay off their home equity loan early, but learned they owed more than \$10,000 instead of \$4,260, according to court documents. Their monthly payment had not changed, but the loan was being paid off more slowly because more of the payment was going to insurance rather than the loan principal.

The state Division of Insurance told CUNA it had acted illegally because the newsletter notice did not comply with requirements. The division then asked the insurance company to waive the extra amount owed by the Thurmans, but the Thurmans instead filed a class action lawsuit on behalf of other borrowers.

Nebraska

Firefighter's Disability Claim Dismissed

BY MARGERY A. BECK
Associated Press

OMAHA, Neb. — A judge has dismissed part of a discrimination lawsuit by a former York firefighter and paramedic who was fired after breaking her foot, but found sufficient evidence that the city treated her less favorably than it had a male firefighter disabled three years earlier.

The judge, however, said Lisa Peter may not be able to show that she would have been able to return to the strenuous job even if the city had afforded her the same treatment it gave her male colleague.

Peter sued the city last year, saying a city administrator repeatedly denied her requests for light duty after she broke her heel in a non-work-

related accident in April 2010. When she was not cleared to work without restrictions by October 2010 — after she had exhausted her sick days, vacation and federal medical leave allowance — she was fired and replaced by a man.

The same administrator cut the weekly work hours of a male York firefighter, who was hospitalized in 2007 for severe pancreatitis, to ensure he would not run out of leave, her lawsuit says. The firefighter was also placed on light duty instead of fighting fires on regular 24-hour shifts.

Peter's lawsuit says York violated federal law protecting those with disabilities and forbidding gender discrimination.

The city argued that the discrepancy happened because the man's illness was more serious than Peter's injury, there was no light duty

available when Peter was injured and federal law did not require the city to create a light duty position.

U.S. District Judge John Gerrard dismissed the city's arguments in an order issued Monday, saying he failed to see the legal relevance of the male firefighter's illness being more serious than Peter's injury.

"They were both unable to work, and both at risk of exhausting their available leave, but treated differently," Gerrard wrote.

As for the assertion that the city wasn't required to create light duty work for Peter, "That may be, but it is no reason for treating employees differently on the basis of gender," the judge wrote.

Gerrard dismissed Peter's disability discrimination claim, saying that because she

could not perform the essential functions of being a firefighter and paramedic with an injured foot, she was not a qualified person under the Americans With Disabilities Act.

But Gerrard said it's clear York treated Peter less favorably than it had her male colleague and that the city's reasons for doing so "are pretextual."

It appears Peter would have run out of medical leave before she was cleared to return to work in January 2012, the judge said, even if she had been given the same treatment as her male colleague. That could invalidate Peter's discrimination claim, because she must be able to show a link between the discriminatory treatment and her firing, Gerrard said.

ATV

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near mile marker 388 in the north ditch; and

- Highway 52 from Highway 153 to West City Limits Road, from near mile marker 338 to near mile marker 342 in both the north and south ditches.

Peterson noted that the stretch along Highway 52 being considered for the ban is smaller than originally proposed.

"Before, we were going all the way out to Highway 50 along the Highway 52 corridor," he stated. "This time, we just went to Highway 153 right by the Cottonwood Corral. We left the west stretch to see if they could get the users to not use the same track and minimize the damage."

Melvin Fish, president of the

Southeast South Dakota ATV Association, said the organization's board of directors has signed off on the need for a ban.

"We didn't have much luck finding any way to solve the problem," he stated. "There are just a few people — probably a handful — that cause most of the problems in that area. The authorities said there isn't much they can do about it. Of course, we can't do it."

Fish had hoped that a dedicated ATV trail could be established along Highway 52 but said the ATV association couldn't find political support for such an endeavor.

"I guess we finally decided that it is a heavy-traffic area and there are a lot of approaches going in and out of businesses and residences," he said. "If it was going to create a problem, probably the easiest thing to do is close it down."

The Transportation Commission and SDDOT staff made a

sincere effort to find other alternatives, Fish said.

"I think they were very helpful," he stated. "We feel that the DOT worked with us, and we tried our best to solve the problem."

Ditch closures do not apply to snowmobiles, off-road vehicles used in normal agricultural operations and service vehicles in the line of duty for utility companies.

State law gives the Transportation Commission or a board of county commissioners the authority to prohibit the operation of off-road vehicles in a highway ditch along any section of highway under its jurisdiction.

If approved next week, Peterson said it will likely be at least a month before the ban is implemented.

You can follow Nathan Johnson on Twitter at twitter.com/AnInlandVoyage

Freeze

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Legislature to ask for help with an unplanned shortfall.

"There's no asking them for more money," Jewett said.

Regent Bob Sutton said a 30 percent increase is speculative, and state insurance officials are working on some ways to keep costs down.

The draft budget anticipates a 3 percent salary increase and an additional 1 percent in salary enhancement for faculty and exempt staff. Inflation is assumed to be at 3 percent.

The board is also looking to increase its maintenance budget for state academic facilities.

5 Districts Appeal State's School Scores

BY BOB MERCER
State Capitol Bureau

PIERRE — Officials from five school districts filed appeals of the annual performance scores that some of their schools received this summer from the state Department of Education.

The appeals came from Tea, Corsica, Dakota Valley, Rapid City and Sioux Falls.

"The majority have to do with summer graduates," said Mary Stadick Smith, a spokeswoman for the department.

She declined to provide further specifics because state and federal regulations prohibit releasing some information when student groups are too small in number.

The scores are calculated before summer class work concludes and graduation discrepancies weren't a surprise.

"That happens every year, so there's nothing unusual in that," she said.

The appeals period closed at 5 p.m. Thursday.

The scores this summer are the first using the department's new performance-index system as a replacement for the No Child Left Behind approach of the past decade.

Last summer there were eight appeals. There were 23 appeals in each of the two prior years.

S.D. Woman Pleads Guilty In Crash

SIOUX FALLS (AP) — Instead of being tried a second time on charges she drove drunk and killed a man, a Sioux Falls woman has pleaded guilty to manslaughter and vehicular battery.

Thirty-year-old Tammy Kvasnicka was sentenced earlier to serve 60 years in prison for the July 2010 crash in which authorities say she drove the wrong way on Interstate 229 in Sioux Falls while drunk and hit an oncoming car. It killed 27-year-old Michael Xayavong.

The state Supreme Court overturned her conviction in March, saying it was improper for a police officer who testified during her trial to compare the force of the crash to more than 900 handguns being fired at once.

Kvasnicka's new trial was scheduled to start Tuesday. Now she faces 37 1/2 years in prison when she's sentenced.

XL Foes To Build Barn In Pipeline's Path

LINCOLN, Neb. (AP) — Opponents of the Keystone XL pipeline in Nebraska are making good on their promise to build a barn in the project's path.

Volunteers will gather on Saturday at a groundbreaking ceremony for the solar- and wind-powered barn. The barn will sit on land directly on the pipeline's route, about 15 miles northwest of York.

Organizers say the barn will serve as a gathering place to learn about sustainable energy alternatives that would benefit agriculture. If President Barack Obama approves a federal permit for the oil pipeline, opponents say the barn's location would force pipeline developer TransCanada to either reroute the Keystone XL or destroy the barn.

Opponents also plan to build picnic tables and paint billboards that will be placed with landowners along the pipeline route.

S.D. Health Clinic Closing After 36 Years

ABERDEEN (AP) — An Aberdeen health clinic that has served America Indians and people with low incomes for 36 years is closing at the end of the month.

Officials with Urban Indian Health aren't commenting on the reasons for the clinic closure or on what will happen to the four employees — a physician's assistant, a nurse/clinic manager and two certified medical assistants, the *American News* reported.

"We are working very hard to transition our patients to other care in the community," said Urban Indian Health Executive Director Donna Keeler.

Urban Indian Health is a nonprofit corporation funded through a contract with the federal Indian Health Service. It also operates clinics in Sioux Falls and Pierre.

Marty LaRoche, 55, of Aberdeen, said he has diabetes and depends on the clinic for monthly checkups and supplies.

"It breaks my relationship with the health clinic and now I will have to go someplace else that will probably cost more," he said.

S.D. July Jobless Rate Drops 0.6 Percent

PIERRE (AP) — The state Bureau of Labor Statistics says South Dakota's unemployment rate in July was 3.9 percent, unchanged from June and down from 4.5 percent in July 2012.

The state's labor force in July increased by 1.6 percent over the year to 449,000, and the level of unemployed dropped by 13 percent to 2,600.

State Labor and Regulation Secretary Pam Roberts says the state's economy continues to strengthen. She says employers are hiring more workers than they were a year ago.

OBITUARIES

Lillian Schultz

Funeral services for Lillian Schultz, age 96 of Wausa, Nebraska, will be 11:00 a.m. Friday, August 16, 2013, at Thabor Lutheran Church in Wausa. Pastor Michelle Oetken will officiate, with burial in the Lutheran Cemetery in Wausa.

Visitation will be Thursday, from 4:00 to 7:00 p.m., at Brockhaus Funeral Home in Wausa.

Lillian died Tuesday, August 13, 2013, at the Golden Living Center in Wausa.

Lillian Viola (Benson) Schultz was born on March 13, 1917, on a farm in Cedar County northeast of Wausa, Nebraska, to Olof and Hilda (Carlson) Benson. Lillian was baptized and confirmed at Thabor Lutheran Church in Wausa and attended Sunday School there. She attended Goldenrod School in Cedar County, Nebraska. After graduation, she was at home and then went to Omaha, Nebraska, to work in a family's home there. Lillian worked along with another girl doing household chores but was also given time to be a companion to the family's 10-year-old daughter who was deaf. Later, she returned to Wausa and worked in various family

homes. At Thabor Lutheran Church, she taught Sunday School for 13 years. Lillian was also a member of the women's organization and served on various committees.

On January 22, 1942, she was married to Glen Schultz at Thabor Lutheran Church in Wausa. To this union, five children were born: Marge, Ann, Dale, Alice, and Barb. After they were married, Lillian spent some time with Glen while he was stationed at Fort Riley, Kansas. After Glen's discharge from the Army in 1945, they started farming in Cedar County, Nebraska, where they and their family lived for 18 years. In 1965 they moved to a farm in Knox County, Nebraska, where they lived for 17 years. Lillian and Glen retired from farming and moved into Wausa. Glen died on May 23, 2002, and Lillian remained in their home until March of 2008, when she moved to the Countryside Villa, where she lived for three years before moving to the Golden Living Center in Wausa. She passed away on August 13, 2013, at the age of 96 years and five months.

Lillian enjoyed reading to her children and grandchildren. She was well-known by family members and others for her delicious rhubarb cus-

tard, apple, and cherry pies, home-made bread, and cookies. Her children and many others knew her to be patient, compassionate, kind, gentle, and pleasant. Lillian's never-ending faith guided her throughout her life.

Lillian is survived by her children, Marge (Richard) Nelson, and Ann (Bruce) Pfeil, all of Wausa, Nebraska; Dale (Kathy) Schultz of Hastings, Nebraska; Alice (Duane) Wragge of Columbus, Nebraska; and Barb (Dan) Pecka of Norfolk, Nebraska; 14 grandchildren, Jeff (Michelle) Nelson of Larchwood, Iowa; Jennifer (Mark) Wemhoff of Lincoln, Nebraska; Chris (Kary) Pfeil of Pierce, Nebraska; Todd (Heather) Pfeil of Seward, Nebraska; Katie of Wausa; Tim (Jennifer) Schultz of Lincoln; Angela (Brian) O'Neal of Lincoln; Kim (Mike) Brown of Lincoln; Brett (Brittany) Wragge of Lincoln; Ryan (Melissa) Wragge of Omaha, Nebraska; Nathan (Nikki) Wragge of Omaha; and Jason, Andrew, and Stacy Pecka, all

of Omaha; her sister, Ellen Johnson of Vashon, Washington; sister-in-law, Maxien Lamprecht of Lincoln; and great-grandchildren, Matt and Mallory Schultz of Lincoln, Aiden and Corbin Pfeil of Pierce, Liam and Maggie O'Neal of Lincoln, Joshua and Claire Nelson of Larchwood, Iowa, Wynn and Eva Pfeil of Seward, Lily Pfeil of Wausa, Anna Wemhoff of Lincoln, Alexa and Brady Brown of Lincoln, and Meredith Wragge of Omaha.

Preceding her in death were her parents, Olof and Hilda Benson; her husband, Glen; her brother, Evald Benson; her sisters Evelyn Wooten and Vera Larson; and great-granddaughter, Lauren.

Yankton Press & Dakotan
August 16, 2013

DAILY LUNCH SPECIALS
11AM-2PM \$6⁹⁵
Yesterday's Cafe
2216 Broadway, Yankton

Thank You

The family of **Dorothy Pudwill** would like to thank everyone for all the expressions of sympathy for the loss of our Mom, Grandma and Great Grandma. Thanks to the Avon Ambulance crew and Wagner Hospital staff for all the caring support they gave to Mom and her family.

We want to thank all our relatives and friends for the cards, prayers, food, visits, kind words, flowers and memorials given in her honor. Thanks to Crosby-Jaeger Funeral Home, Pastor Lorney, the organist, pianists and soloists for their part in the beautiful services. Thanks also to the ladies of the church for their assistance and serving the luncheons following the services.

God's blessings to all.

The families of:
Sandra & Dave Brandt
Carol & Dave Eggers
Rick & Mary Beth Pudwill
Jean & Keith Janssen



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