

South Dakota Supreme Court to decide insurance liability in road kill collision case

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By Josh Chetwynd

The South Dakota Supreme Court heard arguments last week as to whether an insurance company should be required to pay a claim if a motorist slams into a deer carcass on the highway. With the high number of deer collisions in the state, the ruling is one to watch in South Dakota.

The cases, *Zerfas v. AMCO Insurance*, centers on a 2011 accident in which David Zerfas swerved when driving his car on Interstate 29 to avoid a dead deer on the road. He collided with oncoming traffic and subsequently died. His widow Stacy made a claim for insurance benefits with AMCO, arguing that the unidentified motorist who hit the deer and didn't remove the road kill was responsible for her husband's death.

AMOC refused to pay, saying there is no duty for a driver in South Dakota to clear a dead animal off the road.

"Neither South Dakota statute or any common law we've been able to locate creates a duty on behalf of a driver who strikes and either injures or kills wild animals to stop, search and drag the animal from the roadway," said Kent Cutler, who argued on behalf of AMCO before the state supreme court.

Zerfas' lawyer Seamus Cutler countered that drivers always have a duty to act in a manner that assures safety for other motorists. As a result, whoever initially hit the deer had a broad responsibility to make sure the road was safe after killing the animal.

The court listened to oral arguments for 44 minutes. While it did not say how long it will take before handing down a decision, Don Jorgenson, a journalist for Keloland TV in Sioux Falls, SD, said it usually takes 6 to 8 months before decisions are released.

The results may have a big impact on insurance in the state as South Dakota is one of the nation's leaders in deer collisions.

According to a recent study released by State Farm Insurance, South Dakota ranks fifth among all states in terms of the frequency of a deer hit. The report said that there is a 1 in 73 chance of hitting a deer while driving in the state in 2015, which is up 12.3% from the previous year.