

STATEMENT OF THE ISSUES

I. Did the parties have an enforceable agreement for the purchase of fuel?

The trial court held that the agreements were enforceable and granted summary judgment to Stern Oil on the issue of liability.

- *LaMore Restaurant Group, LLC v. Akers*, 2008 SD 32, 748 N.W.2d 756
- *Weitzel v. Sioux Valley Heart Partners*, 2006 SD 45, 714 N.W.2d 884
- *Wilcox v. Vermeulen*, 2010 SD 29, 781 N.W.2d 464

II. Did the trial court misapply the law in refusing to consider evidence offered by Brown and in granting partial summary judgment to Stern Oil on the issue of liability?

This trial court refused to consider Brown's evidence and granted summary judgment to Stern Oil on the issue of liability.

- SDCL 57A-2-202
- SDCL 57A-2-305
- *Dakota Pork Industries v. City of Huron*, 2002 SD 3, 638 N.W.2d 884
- *Fritzmeier v. Krause Gentle Corp.*, 2003 SD 112, 669 N.W.2d 699

III. Did the trial court commit legal or factual error in its award of eight years of "lost profits" to Stern Oil?

This trial court awarded Stern Oil eight years of lost profits amounting to \$925,317.00.

- SDCL 57A-2-708
- *P.F.I., Inc., v. Kulis*, 832 A.2d 931 (NJ Sup. 1997)
- *Vanderwerff Implement Inc. v. McCance*, 1997 SD 32, 561 N.W.2d 24
- *McKie v. Huntley*, 2000 SD 160, 620 N.W.2d 599

IV. Was Brown denied a fair trial by the admission of undisclosed evidence and the trial court's refusal to compel production of relevant evidence?

The trial court denied Brown's motion to compel evidence highly relevant to Stern Oil's damages claim and then admitted undisclosed evidence when offered by Stern Oil at trial.

- *Papke v. Harbert*, 2007 SD 87, 738 N.W.2d 510
- *Kaiser v. University Physicians Clinic*, 2006 SD 95, 724 N.W.2d 186

V. Did the trial court abuse its discretion in denying Brown's motion to file an amended answer and counterclaim prior to trial?

The trial court denied Brown's motion to file an amended answer and counterclaim.

- *City of Aberdeen v. Rich*, 2001 SD 55, 65 N.W.2d 582
- SDCL 15-6-15(a)

VI. Did the trial court err in awarding attorney fees and non-taxable costs to Stern Oil?

This trial court awarded Stern Oil attorney fees and costs in the amount of \$146,997.50.

- *Vanderwerff Implement Inc. v. McCance*, 1997 SD 32, 561 N.W.2d 24
- *Matter of Estate of Schuldt*, 428 N.W.2d 251 (S.D. 1988)
- *Mobile Elec. Serv., Inc. v. FirstTel, Inc.*, 2002 SD 87, 649 N.W.2d 603