

STATEMENT OF LEGAL ISSUES

Three legal issues are before the Court, to-wit:

1. Whether the Trial Court erred in setting aside Action's Judgment by Default on the grounds of excusable neglect.

The Trial Court held that the events of September 11, 2001 excused the Defendant from timely filing its Answer.

2. Whether the improper calculation of Action's judgment, including prejudgment interest, is excusable neglect for purposes of setting the judgment aside.

Judge Srstka opined that miscalculation of the judgment probably did not constitute excusable neglect but he did not reform the judgment.

3. Whether the Trial Court erred in deferring the award of sanctions to Action upon granting United National's Motion to Set Aside Default Judgment, pursuant to SDCL 15-6-60(b) (1966).

The Trial Court deferred its ruling until this matter was tried to the Court on all issues.