

STATEMENT OF THE ISSUES

1. **Whether the trial court erred in refusing to consider extrinsic evidence, both oral and written, to be presented by the Mollers to show Duebendorfer's ratification of the actions taken by the Mollers, thus creating a question of fact for the jury.**

The trial court in its Memorandum Opinion to counsel dated May 31, 2005, (C.I. 67; App. 1-6.) granted Bienash's motion for Summary Judgment on Counts 1 and 4 of Bienash's Complaint and refused to consider extrinsic evidence, both oral and written, to be presented into evidence by the Mollers, and ruled as a matter of law that the Mollers breached their fiduciary duty to Bienash.

- * *Estate of Stevenson*, 605 N.W.2d 818 (S.D. 2000)
- * *Schock v. Nash*, 732 A.2d 217 (Del. 1999)
- * *Wabner v. Black*, 7 S.W.3d 379 (Ky. 1999)
- * SDCL § 55-2-3(1)
- * SDCL § 55-2-8