

## **STATEMENT OF THE ISSUES**

- I. Was the plaintiff denied a fair trial by the trial court's admission of untimely disclosed, unsupported, and unreliable expert testimony concerning alleged "Patient Survival Rates" of the various heart valve replacement procedures available to Mrs. Young?**

The trial court permitted the exhibit to be shown to the jury and explained by Dr. Oury during his direct examination, and then later instructed the jury that it lacked sufficient foundation and should not have been admitted.

- *Kaiser v. University Physicians Clinic*, 2006 S.D. 95, 724 N.W.2d 186
- *Papke v. Harbert*, 2007 S.D. 87, 738 N.W.2d 510
- *Supreme Pork v. Master Blaster, Inc.*, 2009 S.D. 20, 764 N.W.2d 474

- II. Was the plaintiff denied a fair trial by the trial court's exclusion of relevant evidence and admissions related to the defendant's lawsuit against his employer, Rapid City Regional Hospital, where the surgery on Mrs. Young was performed?**

The trial court excluded any evidence regarding the issues, facts, or statements related to the defendant's claims against his former employer.

- *Supreme Pork v. Master Blaster, Inc.*, 2009 S.D. 20, 764 N.W.2d 474
- *St. John v. Peterson*, 2011 S.D. 58, 804 N.W.2d 71
- *First Premier Bank v. Kolcraft Enterprises, Inc.*, 2004 S.D. 92, 686 N.W.2d 430

- III. Was the plaintiff denied a fair trial by the trial court's exclusion of evidence related to the defendant's spoliation of evidence and its refusal of the plaintiff's requested jury instruction on that issue?**

The trial court excluded any evidence related to the videotape of Mrs. Young's surgery and refused the plaintiff's proposed jury instruction.

- *Thyen v. Hubbard Feeds, Inc.*, 2011 S.D. 61, 804 N.W.2d 435
- *State v. Engesser*, 2003 S.D. 47, 661 N.W.2d 739
- *State v. Kietzke*, 186 N.W.2d 551 (S.D. 1971)

**IV. Was the plaintiff denied a fair trial by improper interjection and commentary by the trial court in the jury's presence?**

By operation of SDCL 15-26A-6, the plaintiff's motion for a new trial on this ground was deemed denied.

- *Fechner v. Case*, 2003 S.D. 37, 660 N.W.2d 631
- *Guthmiller v. Weber*, 2011 S.D. 62, 804 N.W.2d 400
- *Schoon v. Looby*, 2003 S.D. 123, 670 N.W.2d 885