

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
DAKOTA, SOUTHERN DIVISION

City of Sioux Falls v. Azzuro, Inc.; Short-Elliott-Hendrickson, Inc.;
Unison Solutions, Inc.

City of Sioux Falls · No. 4:22-CV-04052-ECS · Decided March 31, 2026

SUMMARY

The United States District Court for the District of South Dakota addresses cross-motions for summary judgment arising from the unsuccessful Sioux Falls Water Reclamation Facility Digester Gas Conditioning System Project. The court grants in part and denies in part Unison Solutions, Inc.’s motion and denies Short-Elliott-Hendrickson, Inc.’s motion as to SEH’s indemnification and contribution claims. The opinion analyzes South Dakota principles governing indemnification, contribution, negligence, negligent misrepresentation, and contractual liability.

CASE DETAILS

COURT	United States District Court for the District of South Dakota, Southern Division
WRITING FOR THE COURT	Eric C. Schulte
JURISDICTION	United States District Court for the District of South Dakota, Southern Division
DECIDED	March 31, 2026
DOCKET	4:22-CV-04052-ECS
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for summary judgment in a third-party action brought by Short-Elliott-Hendrickson, Inc. against Unison Solutions, Inc. for indemnification, contribution, misrepresentation, negligence, and breach of contract or warranty.
STANDARD OF REVIEW	Summary judgment is proper only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court views the evidence in the light most favorable to the nonmoving party and may not make credibility determinations, weigh evidence, or draw inferences reserved for the jury. Cross-motions are evaluated independently under this standard.

TOPICS

summary judgment

civil procedure

breach of contract

negligence

negligent misrepresentation

PRACTICE AREAS

civil procedure

construction law

commercial litigation

contracts

torts

municipal law

remedies

QUESTIONS PRESENTED

1. Whether SEH was entitled to indemnification from Unison for liabilities arising from the City's claims against SEH.
2. Whether Unison was entitled to summary judgment on SEH's statutory contribution claim.
3. Whether SEH was entitled to summary judgment establishing a right to contribution from Unison for damages arising from alleged negligence, negligent misrepresentation, or breach of contract.
4. Whether SEH's separate claims against Unison for misrepresentation, negligence, and breach of contract or warranty stated independent claims or merely duplicated its indemnification and contribution theories.
5. Whether equitable doctrines of unclean hands or equitable estoppel barred SEH's contribution claim.

HOLDINGS

1. SEH was not entitled to summary judgment on indemnification, and Unison was entitled to summary judgment on that claim, because SEH could not establish that it bore no proportionate fault and Unison did not warrant that the Azzuro system was defect-free.
2. Both parties' motions for summary judgment on contribution were denied because a rational jury could find that Unison and SEH were jointly liable in tort or that their separate contract breaches caused the same damage.
3. Unison was entitled to summary judgment on Count II because SEH merely pleaded its theory that the City's damages were attributable to Unison and Azzuro and identified no independent damages suffered by SEH.
4. Unison's unclean-hands defense did not apply because contribution is a statutory right rather than an equitable remedy, and Unison failed to establish equitable estoppel on the undisputed facts.

KEY QUOTATIONS

"In South Dakota, indemnity is an 'all-or-nothing' proposition." (12)

"In the Court's judgment, a jury should decide the important issues of liability and contribution." (18)

FACTUAL BACKGROUND

The City commissioned a water reclamation facility project intended to remove hydrogen sulfide and siloxane from digester gas so the City could generate electricity. SEH served as the City's professional engineer and conducted the final design, while Unison contracted with the City to provide biogas-conditioning equipment and subcontracted with Azzuro for the biological hydrogen sulfide removal system. The Azzuro system failed to meet the project's performance requirements, preventing beneficial use of the system and operation of the City's generator. SEH and Unison were both aware of unfavorable information concerning Azzuro's technology, but the City alleged that SEH negligently recommended and designed the project and that Unison was also responsible for the resulting losses.

PROCEDURAL HISTORY

The City of Sioux Falls sued parties involved in a failed digester gas conditioning project, including Short-Elliott-Hendrickson, Inc. SEH filed a third-party complaint against Unison Solutions, Inc. seeking indemnification or contribution and damages for alleged tort and contract or warranty violations. The City and Unison entered into a release before the litigation, and Unison and SEH filed cross-motions for summary judgment. The court granted Unison summary judgment on indemnification and SEH's separate Count II, denied both parties' motions on contribution, and dismissed the indemnification and Count II claims with prejudice.

DISPOSITION

other

CASES CITED

- *Allan v. Minn. Dep't of Hum. Servs.*, 127 F.4th 717, 720 (8th Cir. 2025)
- *Avenoso v. Reliance Standard Life Ins. Co.*, 19 F.4th 1020, 1024 (8th Cir. 2021)
- *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)
- *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc)
- *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per curiam)
- *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)
- *McCormack v. Citibank, N.A.*, 100 F.3d 532, 537 (8th Cir. 1996)
- *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)
- *Emps. Mut. Cas. Co. v. Brant Lake Sanitary Dist.*, 446 F. Supp. 3d 557, 562 (D.S.D. 2020)
- *Fed. Ins. Co. v. Great Am. Ins. Co.*, 893 F.3d 1098, 1102 (8th Cir. 2018)
- *Ebert v. Fort Pierre Moose Lodge # 1813*, 312 N.W.2d 119, 122 (S.D. 1981)
- *Weiszhaar Farms, Inc. v. Tobin*, 522 N.W.2d 484, 492 (S.D. 1994)
- *Sheehan v. Morris Irrigation, Inc.*, 460 N.W.2d 413, 417 (S.D. 1990)
- *Mark, Inc. v. Maguire Ins. Agency, Inc.*, 518 N.W.2d 227, 230 (S.D. 1994)
- *Bunkers v. Jacobson*, 653 N.W.2d 732, 741 (S.D. 2002)
- *Jones v. Kartar Plaza Ltd.*, 488 N.W.2d 428, 429 (S.D. 1992) (per curiam)
- *Fisher v. Kahler*, 641 N.W.2d 122, 126-27 (S.D. 2002)

- City of Bridgewater v. Morris, Inc., 594 N.W.2d 712, 714, 716-17 (S.D. 1999)
- Halls v. White, 715 N.W.2d 577, 585 (S.D. 2006)
- Hershey v. Hershey, 467 N.W.2d 484, 487 n.1 (S.D. 1991)
- L.R. Foy Constr. Co. v. S.D. State Cement Plant Comm'n, 399 N.W.2d 340, 343 (S.D. 1987)
- Dakota Truck Underwriters v. S.D. Subsequent Inj. Fund, 689 N.W.2d 196, 204 (S.D. 2004)

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