

**ORIGINAL**

20010273

Case No.: 20010273  
District Court No. 01-C-00015  
IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

MAR 12 2002

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STATE OF NORTH DAKOTA

JERRY L. MEIDE, INDIVIDUALLY  
AND MEIDE & SON, INCORPORATED,  
A NORTH DAKOTA CORPORATION,  
Appellants,

v.

WAYNE STENEHJEM, ATTORNEY  
GENERAL, EX REL., STATE OF  
NORTH DAKOTA, STATE HEALTH  
DEPARTMENT, AND ENVIRONMENTAL  
ABATEMENT SERVICES, INC.,  
Appellees.

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APPEAL FROM THE JUDGMENT OF THE RICHLAND COUNTY  
DISTRICT COURT DATED AUGUST 23, 2001  
THE HONORABLE RICHARD W. GROSZ

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REPLY BRIEF OF THE APPELLANTS

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## STATEMENT OF THE ISSUES

**ISSUE 1:** Paragraph XX (1) of the Consent Agreement is ambiguous in that said paragraph fails to set forth any amount to be paid under the Consent Agreement.

## Argument

**ISSUE 1:** Paragraph XX (1) of the Consent Agreement is ambiguous in that said paragraph fails to set forth any amount to be paid under the Consent Agreement.

A contract is ambiguous "when rational arguments can be made in support of contrary positions as to the meaning of the language in question." Pamida, Inc v. Meide, 526 NW2d 487. 490 (ND 1995).

In this case the District Court ruled that the language of the contract was not ambiguous. Appendix p. 129. The language in question is as follows:

Jerry L. Meide and/or Meide and Son, Incorporated shall satisfy any obligations owing to ... Environmental Abatement Services of ND, the environmental remediation contractor who performed the asbestos cleanup on the identified buildings in Wahpeton, ND within 2 years from the date of entry of judgment herein...

The language in question does not set forth any amount due.

The use of the word "any" does create an ambiguity. Any is defined by *Merriam Webster's Collegiate Dictionary* as follows:

**1:** one or some indiscriminately of whatever kind:  
**a:** one or another taken at random...**b:** every-used to indicate one selected without restriction...**2:** one, some, or all indiscriminately of whatever quantity:  
**a: one or more-used to indicate an undetermined number or amount...****b:** ALL-used to indicate a maximum or whole...**c:** a or some without reference to quantity or extent...**3 a:** unmeasured or unlimited in amount, number, or extent...**b:** appreciably large or extended.

*Black's Law Dictionary, Revised Fourth Addition* defines "any" as follows:

Some; one out of many; an indefinite number.

When Jerry Meide and his attorney R.E.T. Smith, of Wahpeton, ND, negotiated this settlement they intended that the amount be left open for negotiation or determination at a later date. Appendix p. 35, paragraph 15 and 18; Appendix p. 135, paragraph 8.

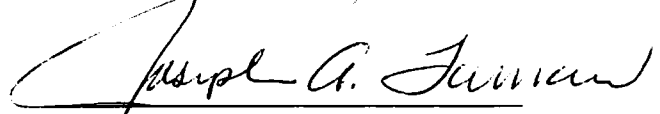
Because rational arguments can be made for the agreement to either allow Appellants to litigate or not litigate the issue of the amount owed, an ambiguity exists and this case should be remanded for judicial determination of the sums claimed due by Environmental Abatement Services, Inc. of North Dakota.

#### **Conclusion**

Jerry L. Meide and Meide & Son Incorporated, Appellants in this matter, respectfully request this Court to reverse the judgment of the Richland County District Court and remand this case for trial on the merits.

Dated this 1<sup>st</sup> day of March, 2002.

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