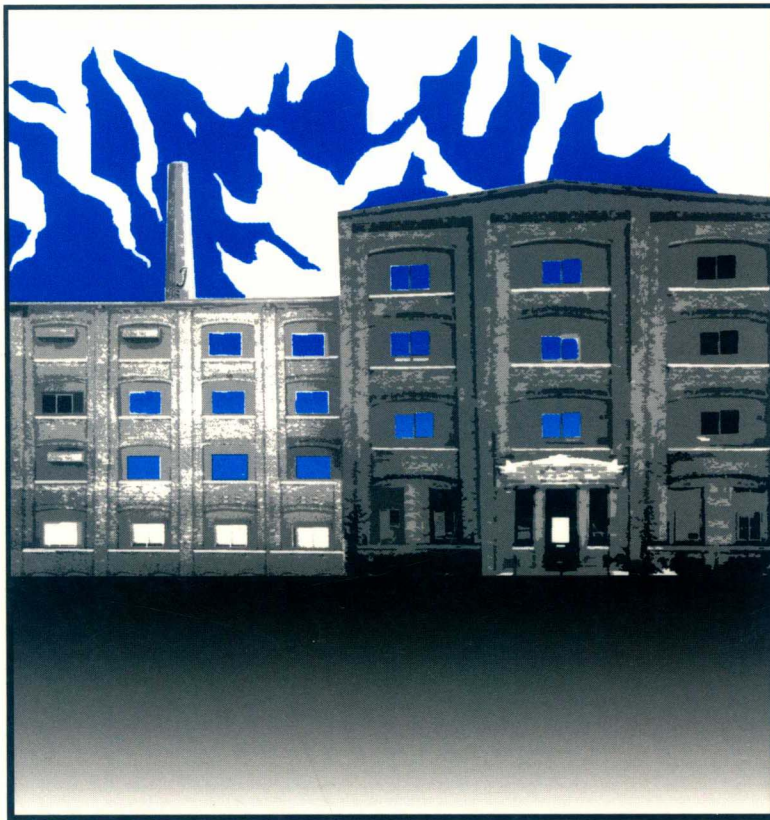




NATIONAL INSTITUTE FOR TRIAL ADVOCACY



Flinders Aluminum v. Mismo Fire Insurance

Case File
Seventh Edition

Rebecca Sitterly
Laurence M. Rose
Frank D. Rothschild

Based on the original case file Flinders v. Mismo
created by Abraham P. Ordover

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National Institute for Trial Advocacy

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FLINDERS ALUMINUM v. MISMO FIRE INSURANCE

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Amy Davis, Esq., Albuquerque, New Mexico, for her portrayal of Marie Williams;

Brad Hall, Esq., Albuquerque, New Mexico, for his portrayal of Arthur Jackson;

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Lieutenant William A. Dunn, Commercial Crimes Bureau, Sheriff Leroy D. Baca, and the men and women of the Los Angeles County Sheriff's Department for their generous provision of fire scene photographs and video clips of High Temperature Accelerant fires, all of which are used in this case file with the express written permission of the Los Angeles County Sheriff's Department;

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Case Summary

This civil action was brought by the Flinders Aluminum Fabrication Corporation to recover the proceeds of a fire insurance policy issued by defendant Mismo Fire Insurance Company. Plaintiff's plant was completely destroyed by fire on the night of November 16, 2004. George Avery died in the fire.

The plant was insured for \$1,667,000. The defendant has refused to pay on the grounds that the fire was the work of an arsonist. It asserts that Arthur Jackson, the sole stockholder of Flinders, conspired with others to deliberately burn the facility in order to collect the proceeds of the policy.

The applicable law is contained in the proposed jury instructions that are set forth at the end of the case file.

Special Instructions

When this case file is used for a full bench or jury trial, the following witnesses may be called:

Plaintiff:

Arthur Jackson
Janice Jackson
Sonia Peterson
David Pinkus

Defendant:

Marie Williams
John Anderson
Matthew Korn
Donald Olsen

It has been stipulated that Exhibits 20–24 are business records as defined by section 803(6) and 803(8) of the Federal Rules of Evidence.

Suggested Time Limits for Full Trial

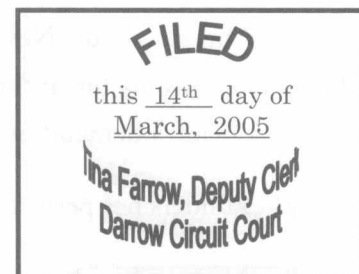
Voir Dire	10 minutes per side (5 minutes per attorney when teamed up)
Opening Statement	20 minutes per side
Witness examination	120 minutes per side
Closing argument	20 minutes per side

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IN THE CIRCUIT COURT OF
DARROW COUNTY, STATE OF NITA
CIVIL DIVISION



FLINDERS ALUMINUM FABRICATION CORPORATION,

Plaintiff,

vs.

No. CV-235894

MISMO FIRE INSURANCE COMPANY,

Defendant.

COMPLAINT FOR BREACH OF INSURANCE CONTRACT

Plaintiff Flinders Aluminum Fabrication Corporation ("Flinders"), through its attorneys TINKER, EVERS & CHANCE (Frank Chance), states its complaint against Mismo Fire Insurance Company ("Mismo") as follows:

1. Flinders is a corporation incorporated and licensed to do business in the State of Nita. Flinders is in the business of designing, fabricating, and manufacturing various aluminum components.
2. Mismo is a corporation licensed to do business in the State of Nita. Mismo is in the business of writing and issuing fire insurance policies.
3. At all times relevant to this action, Flinders owned and operated an aluminum fabrication plant located at 187 River Road, Nita City, Nita 99997.
4. On January 1, 1995, for consideration paid by Flinders, Mismo issued and delivered to Flinders a fire insurance policy No. 951946, pursuant to which Mismo agreed to insure the Flinders plant against fire and other perils in the amount of \$835,000.
5. Flinders renewed the Mismo fire insurance policy each year following January 1, 1995. On or about October 1, 2004, the face amount of the policy was increased to \$1,667,000. The Flinders plant was valued at \$1,667,000.

6. On or about November 16, 2004, the Flinders plant was completely destroyed by fire. The Mismo fire insurance policy was in full force and effect on the date of the fire, and Flinders made a demand on Mismo to pay the full amount of the policy.

7. Flinders has performed all conditions precedent to payment of the fire insurance policy.

8. Mismo has failed and refused to pay Flinders the proceeds of the fire insurance policy, in violation of the terms of the insurance contract.

WHEREFORE, Flinders respectfully requests judgment be entered against Mismo in the amount of \$1,667,000, plus reasonable costs and interest on the judgment at the statutory rate, and for such other relief as the Court may deem just.

JURY DEMAND

Plaintiff Flinders Aluminum Fabrication Corporation demands a trial by jury in this cause of action.

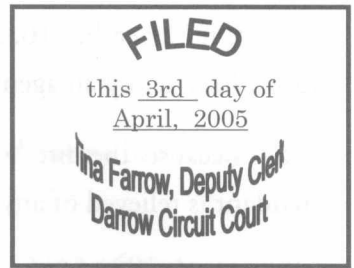
Respectfully Submitted,

TINKER, EVERS & CHANCE

By: Frank Chance
Frank Chance
Attorney for Plaintiff
411 Main Street
Nita City, Nita 99990
(721) 555-3000

DATED: March 19, 2005

IN THE CIRCUIT COURT OF
DARROW COUNTY, STATE OF NITA
CIVIL DIVISION



FLINDERS ALUMINUM FABRICATION CORPORATION,

Plaintiff,

vs.

No. CV-235894

MISMO FIRE INSURANCE COMPANY,

Defendant.

ANSWER

Defendant Mismo Fire Insurance Company ("Mismo"), through its attorneys DIERKER, DIETZ & DIMAGGIO (Ellen Dietz), answers the complaint by Flinders Aluminum Fabrication Corporation ("Flinders") as follows:

I

1. Paragraphs 1, 2, 3, 4, 6, and 7 of plaintiff's complaint are admitted.

2. Paragraph 5 of plaintiff's complaint is admitted insofar as it alleges that the policy was renewed from year to year and that the face amount of the policy was increased to \$1,667,000 on October 1, 2004. Defendant denies the last sentence of Paragraph 5 in that any valuation of the premises at \$1,667,000 came only from plaintiff itself.

3. Paragraph 8 of plaintiff's complaint is denied.

II

AFFIRMATIVE DEFENSES

4. The policy of fire insurance provides at § 9 that "This company shall not be liable for loss caused by or resulting from arson where the same was occasioned by the deliberate acts of the insured or any agents thereof."

5. On November 16, 2004, the insured premises were destroyed by a fire that was deliberately and willfully set by an agent or agents of plaintiff in an attempt to collect the insurance proceeds.

6. Because the fire was deliberately and willfully set by an agent or agents of plaintiff, defendant is relieved of any and all obligations under the policy.

WHEREFORE, defendant demands that the complaint be dismissed and judgment entered in favor of defendant together with the costs of this action.

Respectfully Submitted,

DIERKER, DIETZ & DIMAGGIO

By: Ellen Dietz

Ellen Dietz
Attorney for Defendant
Nita National Bank Bldg.
Suite 222
Nita City, Nita 99990
(721) 555-9000

DATED: April 3, 2005

Deposition of Marie C. Williams

May 20, 2005

MARIE C. WILLIAMS, called to testify on deposition by the plaintiff and having been duly sworn, testified as follows:

My name is Marie C. Williams. I am thirty-five years old. I live at 2242 169th Avenue, Nita City. I am single with no dependents and live alone. I was employed as a bookkeeper and assistant to the president of the Flinders Aluminum Fabrication Corp. in Nita City.

I was hired as bookkeeper on October 1, 1995. About five years ago, I was also given the title of assistant to the president. I held both positions until August 2004. Thereafter, I held only the bookkeeper post. On December 1, 2004, I was discharged by Mr. Arthur Jackson, the president of the company. I had worked directly for Mr. Jackson since I joined the company. Mr. Jackson and I had a close personal relationship up until August of 2004, when he hired Sonia Peterson as his personal aide. Thereafter, my personal relationship with Mr. Jackson terminated.

He and I had been lovers since 2001. Mr. Jackson is married and has three children, but told me that he was very unhappy and promised that he would leave his wife.

16 Q: Ms. Williams, what did Mr. Jackson say to you about his marriage?

17 A: He said that he was very unhappy at home, and he promised me that he was going
18 to leave his wife. But he never left her, and finally I realized that he had lied to
19 me all along about leaving her.

20 Q: What was your reaction when you realized that?

21 A: I was really, really angry with him, and I finally broke off our relationship that
22 fall when he hired Sonia Peterson.

The company employed from twenty-five to forty workers, depending upon the amount of business it had. The company was administered largely by Mr. Jackson and myself until Ms. Peterson was hired. A separate sales staff was employed. They had little to do with the central administrative functions. We also employed several people in the shipping department.

In 2003, the company had a disastrous year. Losses for the year totaled some \$500,000. The year 2004 was even worse. Losses for the first nine months totaled an additional \$500,000. Bank loans of \$400,000 became due on November 28. In October 2004, Mr. Jackson attempted to renegotiate the loans with the lender, First Trust Bank. I participated in those negotiations with

Mr. Jackson and Mr. Anderson, vice-president of the bank. The negotiations failed. The loans went unpaid pending receipt of the fire insurance money.

At one meeting with Mr. Anderson, Mr. Jackson spoke of the Avery "designs" and the company's plans to get into the automobile market. Anderson seemed skeptical and requested drawings, market studies, and the like.

At no time were any such studies undertaken by the company. Nor do I recall any negotiations with any automobile manufacturer.

Mr. Anderson also requested that we supply the bank with current financial information. Mr. Jackson never asked me to prepare and send such data to the bank. I don't know if he, Ms. Peterson, or anyone ever sent the information.

On July 14, 2004, Mr. Jackson informed me that if the company didn't pick up new accounts in the last half of the year, it would go under. He complained bitterly of financial problems throughout the months that followed.

Sometime in early September, I overheard a conversation between Mr. Jackson and Ms. Peterson in which she offered to put him in touch with someone named Avery, who, she said, could solve his financial problems. I first saw them sitting and talking by looking through the door to Mr. Jackson's office that is across from my office. I then walked over to that doorway and, staying out of sight, heard their conversation. With regard to Mr. Avery, I also heard Ms. Peterson describe him as a torch to Mr. Jackson. As best I can recall, the exact words she used were something like: "I know a man named George Avery who can solve all of your financial problems. George is a real torch; he could light up this business for you."

On September 15, 2004, Mr. Avery came to the plant and met with Mr. Jackson. Afterwards, Mr. Jackson asked me to draw a company check to George Avery for \$5,000 and give him both the check and one of our spare plant keys. Mr. Jackson told me Mr. Avery was a tool and die designer who would soon be working at the plant to design dies for fabricating parts for use in automobiles. Exhibit 19 is the check I gave to Mr. Avery that day. As I recall, he started working at the plant on October 1st.

Also in September, Mr. Jackson contacted the insurance company and increased the fire insurance coverage on the plant, effective October 1st. I wrote the check for the increased premium.

I worked late on November 16. I recall that Mr. Jackson came back to the plant at 7:00 P.M. Avery had come in at about 6:30 P.M. One crew was finishing up a rush job. They left at about 6:45 P.M. I was surprised to hear machinery in operation after the last crew had left. I started to go downstairs to check out the matter when I met Mr. Jackson. He was surprised and annoyed to see me there and ordered me to leave at once. I did so. The plant burned down that evening. Avery died in the fire.

- 1 Q: When did you see Mr. Jackson next?
- 2 A: It was about a day or two after the fire.
- 3 Q: What did you say to each other?
- 4 A: I told him right off that I suspected that he had paid Avery to burn down
- 5 the building in order to get the insurance money.
- 6 Q: How did he respond?
- 7 A: He denied it. He said he didn't do it.
- 8 Q: What action did you take based upon your suspicions?
- 9 A: I didn't do or say anything right away, but about ten days later, Mr. Jackson fired
- 10 me. It was after that that I went to the police and talked to Detective O'Brien, and
- 11 I told him what I suspected Mr. Jackson had done.

It is true that I no longer care for Mr. Jackson, but that is not why I am willing to testify here. I am telling the truth.

I, MARIE WILLIAMS, do hereby certify that I have read the foregoing pages of my testimony as transcribed and that it is a true and correct transcript of the testimony given by me in this deposition on May 20, 2005, in the offices of plaintiff's counsel.

Marie Williams

Marie Williams

Certified by:

Ann E. Hall

Ann E. Hall

Certified Shorthand Reporter (CSR)

Deposition of John Anderson

June 2, 2005

JOHN ANDERSON, called to testify on deposition by the plaintiff and having been sworn, testified as follows:

My name is John Anderson. I am vice president of First Trust Bank in Nita City, and I am in charge of commercial lending for the bank. I graduated from the University of Kansas in 1984 with a business administration degree. I then attended Northwestern University in Chicago and received a masters in business administration in 1988. I received the National Chamber of Commerce Fellowship Grant in my final year, and used it to complete a study of innovative ways to finance new business development in urban areas. My area of concentration while in school was studying the reasons for capital flight from urban centers and methods for revitalizing urban business communities.

I moved to Nita City in 1989 after completion of my fellowship and became employed at First Trust Bank as a loan officer in the residential department. I was able to transfer to the commercial department in 1990, as my primary interest is in commercial and business lending. I was a commercial loan officer from 1990 to 1996. At that time the bank reorganized its troubled loan department and established a Workout Division devoted solely to resolving lending difficulties with companies in default on their commercial loans. I was the manager of that division from its inception to 1999, when I was promoted to the position of vice president in charge of all commercial lending, the position I still hold today.

Flinders Aluminum Company had an outstanding loan which, together with interest, was in the amount of \$400,000. Payment of this amount was due November 28, 2004.

During the month of October of that year, I had several meetings with Mr. Arthur Jackson. On one occasion, he was accompanied by an aide, Ms. Marie Williams.

During these meetings, Mr. Jackson sought to refinance the \$400,000 loan. His company, he said, was not in a position to make the payment. It had suffered losses of approximately \$1,000,000 in the two previous years.

Mr. Jackson informed me of a plan to fabricate auto parts from aluminum for General Motors. He said he had employed a new designer for that purpose and gave me a copy of his resume. He wanted to establish a long-term financing plan for Flinders to accomplish the transition to the new product line.