



## The Voice

### And The Defense Wins

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On June 26, 2016, DRI member [John W. Walters](#) of **Walters Meadows Richardson**, in Lexington, Kentucky, obtained a defense verdict on behalf of his client, Nationwide Agribusiness, in a case before the Clark County (KY) Circuit Court.

In February 2013, Cathy Edwards contacted Renee Miller, an agent at the Tim Hamilton Insurance Agency to secure insurance coverage on a winery and tasting room in Clark County Kentucky. Ms. Miller obtained Insurance covering the property from Nationwide Agribusiness Insurance Company. Coverage was bound February 27, 2013. In April 2013, when a bill for the policy was sent to Harkness Edwards Vineyards, the owners, Harkness and Cathy Edwards decided the policy was too expensive and refused to pay the premium. The policy was canceled for non-payment of the premium on May 20, 2013.

No down payment was ever collected on the policy, and Nationwide initiated efforts to collect a premium for the coverage that was in place between February 27 and May 20, 2013. When contacted by Nationwide, the Edwards claimed they never authorized the policy to be issued, had never signed any agreement to procure coverage, and insisted on retroactive cancelation of the policy. Nationwide agreed to cancel the policy retroactively after receiving a signed cancelation form on August 6, 2013.

While working through the retroactive cancelation process with Nationwide, the Edwards renewed discussions with Ms. Miller in an effort to obtain more acceptable coverage on the winery. Ms. Edwards and Ms. Miller exchanged several e-mails between July 20, 2013, and August 6, 2013, discussing the available coverage options and premiums. On August 7, 2013, the winery building was struck by lightning and burned to the ground resulting in a loss near \$1 million.

To complicate matters, the retroactive cancelation of the February policy required an administrative reinstatement of the policy to cancel premiums due. During this process a bill for a premium on the February policy was sent to the Edwards two weeks after the fire.

The Edwards proceeded on three theories. First, that insurance coverage was in place because of the administrative reinstatement, and thus Nationwide and breached the insurance contract. Second, if no coverage was in place, Ms. Miller was negligent in failing to procure insurance for the Edwards. Third, the plaintiffs advanced an equitable argument that coverage should have been bound in the amount of \$575,000 dollars based on the e-mail exchanges between Miller and Edwards. The Edwards argued that Ms. Miller's prior conduct of submitting an unsigned application and failure to collect a down payment constituted a pattern of conduct that induced the Edwards to believe that insurance was in place on the date of the fire.

The court granted directed verdicts for the defendants on the contract and negligence claims, and sent the equitable claim to the jury, asking only a single question, whether or not Nationwide, but a prior pattern of

conduct, would have caused the Edwards to reasonably believe they had insurance coverage. After 20 minutes of deliberation, the jury found unanimously for the defendants.

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