

State Trial Courts

VERDICT: Defense, "innocent insured," arson.

A Billings jury found 12-0 that Farmers Union Mutual Ins. did not breach the contract with Nancy Lane in connection with arson of her home and did not neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonable clear, that she (10-2) and her husband Brad (12-0) directly or indirectly set the fire with intent to cause the loss, and (12-0) that they both made false representations on the policy application or proof of loss.

The home, which was being purchased by Nancy in Lockwood, was destroyed by fire in 2/95. She was then living in Glendive. Brad was charged with arson but the charges were dismissed at trial in 1997. Nancy then sued Farmers Union contending that she was an innocent insured, it had acted in bad faith, and she was entitled to all insurance benefits totaling \$216,372, general damages, and punitives. Farmers counterclaimed and third-partied in Brad, who later was defaulted. Judge Colberg granted summary judgment for Farmers Union based on the default judgment against Brad. *Lane* (Mont. 2000) reversed, holding that Nancy's claim was not barred by the default judgment against Brad and adopting a new rule on deemed-admitted facts and legal conclusions in default judgments.

Plaintiff's experts: none.

Defendant's experts: Billings Det. Richard Hirschi; Billings Fire Marshall Lonnie Larson; EE Daniel Choudek, Prairie Eden, Minn.

Nancy demanded full payment on the proof of loss until the week before trial when she offered to settle if the parties agreed to certify certain issues for appeal relating to *Woodhouse* (Mont. 1990) and pay her \$150,000 if she prevailed on appeal. Farmers rejected her offer and counter-offered in the form of Nancy confessing to a judgment that the policy was void because the fire was intentionally set and the insureds had made material false representations in the policy application and claims process. Jury request, \$216,372 plus general & punitive damages to be determined by jury; jury suggestion, \$0.

Jury deliberated 1½ hours 4th day; Judge Todd.

Lane v. Farmers Union Mutual Ins., Yellowstone DV 97-0143, 7/26/01.

Kenneth Peterson (Peterson & Scofield), Billings, for Lane; James Halverson (Herndon, Sweeney & Halverson), Billings, for Farmers Union.