

**2012 TENNESSEE STATE HIGH SCHOOL
MOCK TRIAL COMPETITION
CASE MATERIALS**

**IN THE CIRCUIT COURT FOR SHRADER COUNTY
AT MONT' SERRAT, TENNESSEE**

**MID-SOUTH INSURANCE LIABILITY
COMPANY, INC., a Delaware corporation
doing business in Tennessee,**

PLAINTIFF,

v.

**DENIM N'MORE, INC., a domestic
corporation,**

DEFENDANT.

**No.: 867530-9
JURY DEMANDED**

The Tennessee State High School Mock Trial Competition is organized by the Young Lawyers Division of the Tennessee Bar Association.

Questions or comments may be directed to your Mock Trial District Coordinator or the Chair of the State Competition. Teams may not edit the materials. Please note the rule changes that apply to this year's competition.

The problem is as written. If there are discrepancies, please regard them as complexities for consideration in developing a trial strategy. **All characters may be portrayed by persons of either gender. Any similarities between true events shall be disregarded.**

This year's High School Mock Trial Committee is comprised of:

Troy Weston, Chair, Eldridge & Blakney, P.C.

Candi Henry, Vice Chair, Dodson, Parker, Behm & Capparella, P.C.

Sarah McKinney Coleman, Coleman Law Offices, PLLC

Kristen Corn, City of Franklin Law Department

Joshua Dougan, Rainey, Kizer, Reviere, & Bell, P.C.

William Holloway, Schell, Binkley & Davies, LLC

Tommy Santel, Cope, Hudson, Reed & McCreary, PLLC

PAST WINNERS

1980	Austin-East High School
1981	Bearden High School
1982	White Station High School
1983	White Station High School
1984	Knoxville West High School
1985	Father Ryan High School
1986	Knoxville Doyle High School
1987	Greeneville High School
1988	Memphis Central High School
1989	Jackson Central Merry High School
1990	Father Ryan High School
1991	Father Ryan High School
1992	Franklin High School
1993	Montgomery Bell Academy
1994	McCallie School
1995	Montgomery Bell Academy
1996	Clinton High School
1997	Clinton High School †
1998	Houston High School
1999	Clinton High School
2000	Clinton High School
2001	Clinton High School
2002	Family Christian Academy *
2003	Family Christian Academy *
2004	Hume-Fogg Academic High School
2005	Hume-Fogg Academic High School
2006	Knoxville West High School
2007	St. Mary's Episcopal School of Memphis
2008	St. Mary's Episcopal School of Memphis
2009	White Station High School
2010	White Station High School
2011	White Station High School

*Indicates a team that went on to win the National Championship.

† Indicates a team that went on to place second in the National Championship.

NOTE TO TEAMS ADVANCING TO STATE COMPETITION

TO ADD COMPLEXITY AT THE STATE COMPETITION, THE MOCK TRIAL COMMITTEE **MAY** RELEASE ADDITIONAL MATERIAL FOR THE STATE COMPETITION ON MARCH 1, 2012 AT OR BEFORE 5:00 P.M. CST. PREVAILING TEAMS FROM EACH DISTRICT SHOULD ACQUIRE AND PREPARE ANY ADDITIONAL MATERIAL BETWEEN THE DISTRICT AND STATE COMPETITIONS.

COPYRIGHT NOTICE

THESE MATERIALS ARE COPYRIGHTED. Students participating in the Tennessee State High School Mock Trial Program may use and reproduce these materials for that purpose. For permission to reproduce or use these materials for other purposes, please contact the Tennessee Bar Association Young Lawyers Division.

CASE SUMMARY¹

Jesse Stewart is the founder and sole shareholder of Denim N' More, Inc., located in the city of Mont' Serrat, Shradler County, Tennessee. Denim N' More, which employed approximately 150 people in its heyday, was a textile manufacturer. Specifically, Denim N' More produced customized denim shirts and hats for other businesses (specifically utility companies and janitorial services providers) to use for employee uniforms and marketing opportunities.

Today, in light of recent economic trends, and a shrinking industrial work force in the area around Mont' Serrat, Tennessee, Denim N'More has been forced to reduce its workforce by approximately one-third. Despite the economic downturn, however, Stewart is confident in the future of Denim N'More, either as an independent regional corporation, or as a subsidiary of a larger textile manufacturer. However, Stewart is aware that for the immediate survival and continuance of operations, an influx of working capital is absolutely necessary.

Late on the evening of Friday, June 15, the Mont' Serrat, Tennessee Fire Department received a report of smoke coming from Denim N' More. On further investigation, fire crews discovered that a substantial portion of Denim N' More was ablaze. Particularly, the rear portion of the building used to house raw materials was violently burning. The fire, the largest in Shradler County's history, raged for nearly 13 hours. Over 50 firefighters worked throughout the night to bring it under control.

Approximately 4:15 a.m. on the morning of Saturday, June 16, authorities were able to make contact with Stewart and inform him of the situation. He immediately drove back to Denim N' More from his wife's second home in Kentucky, where he had planned to spend the weekend.

The next morning, investigators employed by both the Shradler County Sheriff's Department and Mid-South Liability Insurance Company (MSL) arrived at the scene. MSL, which carried Denim N' More's insurance, was particularly concerned about the fire's origins. This suspicion was further heightened when MSL learned that Denim N' More's fire alarm system, although recently inspected, failed to function properly. After studying the scene and undertaking various chemical analyses, MSL's investigators concluded that the Denim N' More fire was intentionally set. As a portion of their extensive investigation, MSL obtained recorded statements from several individuals.

Despite the findings of MSL's investigation, the Shradler County Sheriff's Department was not able to come to any formal conclusion as to the reason for the fire. Currently, this case is classified as a fire of inconclusive origin and there is no on-going investigation.

¹ This case summary is meant to quickly acquaint participants with the 2012 problem. It is **not** evidence, nor does it represent a statement by any of the characters/witnesses.

The month after the Denim N' More fire, MSL issued a formal denial of Stewart's claims. In its denial, MSL relied on the insurance policy's language regarding intentional losses. Immediately after denying Stewart's claim, MSL Company filed a declaratory action in the Shradler County Circuit Court, seeking a ruling that Stewart is not entitled to the proceeds from the insurance contract due to a violation of the contract's intentional losses portion. See Tenn. Code Ann. § 29-14-101 *et seq.*; see also Tenn. R. Civ. P. 57 (governing the demand for a jury in a declaratory judgment action). Stewart, of course, will argue that because he did not intentionally cause Denim N' More's fire, he did not breach the contract, and is thus entitled to recover for his losses (nearly \$13,000,000.00).

Because Stewart's alleged intentional burning is a policy defense, the burden of proof is on Mid-South Liability Co. MSL must prove, by a preponderance of the evidence, that the Denim N' More loss was due to a fire of incendiary origin, that Stewart had the opportunity to cause or procure the fire, and that he had a motive to do so. MSL may prove its policy defense by either direct or circumstantial evidence.

AGREED STIPULATIONS

1. Plaintiff Mid-South Insurance Liability Company, Inc. is a Delaware corporation organized under the laws of Delaware, and doing business, at all relevant times to this litigation, in Tennessee.
2. Defendant Denim N' More, Inc. is a Tennessee corporation organized under the laws of Tennessee. Its principal place of business is 1001 Jeans Avenue, Mont' Serrat, Tennessee in Shradler County.
3. The Plaintiff filed civil suit against the Defendant in the Circuit Court for Shradler County, Tennessee in August 2011 seeking Declaratory Judgment under the insurance policy that is held by the Defendant. Plaintiff claims that the Defendant intentionally set fire to its facility, therefore absolving the Plaintiff of responsibility for payment under the insurance contract.
4. The portion of the insurance policy that is included in these materials is authentic. The portions of the contract not included herein are irrelevant to this matter.
5. The parties stipulate that there is no fault in the formation of the contract.
6. Pursuant to the insurance policy, if the Defendant intentionally or willfully set fire or caused fire to be set to the property, the Plaintiff is not obligated to pay out under the policy.
7. The policy at issue contains a maximum payout of \$12,850,000.00 based upon the undisputed "total loss" value of the premises.
8. Whenever a rule of evidence requires reasonable notice, the teams must presume that such notice has been given.
9. All exhibits included in this problem are authentic and accurate in all respects (and are what they are identified to be on the face of the document). No objections as to the authenticity of the exhibits may be made. Exhibits may still be objectionable under the Mock Trial Rules of Evidence or require a proper foundation for admission. Exhibits may be copied and enlarged for demonstrative purposes but shall not exceed 36" x 48" in size.
 - a. Noel E.R. Donovan has knowledge of AAA CPA's Appraisal Report, and reviewed it in forming his/her opinion of the valuation.
 - b. Andy Burns has knowledge of his *curriculum vitae* and prepared his Origin & Cause Report.

- c. Jesse Stewart has knowledge of the Denim N' More Complex Diagram and can attest to it and the pictures of the facility's accurateness.
 - d. Stacy Summers has knowledge of the Star Jeweler's receipt and can identify the handwriting on the receipt as Jesse Stewart's.
 - e. Jamie Whineshack has knowledge of his/her employment record.
 - f. Jamie Whineshack was convicted of forgery in 2008 and placed on probation for 18 months.
 - g. Exhibit J is a copy of the pertinent part of the insurance policy in this matter. Jesse Stewart and Yağmur Merteuil have knowledge of this document.
10. No props may be used. Teams may use markers, pens, pointers, or sticky notes to assist in the presentation of witness testimony concerning an exhibit.
11. Participants may only cite evidence contained herein. Cross-reference to other mock trial problems is prohibited. Any similarity to true events or persons is unintentional. Parties may not cite legal or factual authority outside that presented in the problem, the Rules of the Competition, and the Mock Trial Rules of Evidence.
12. Stipulations may not be contradicted or challenged. However, it shall be the responsibility of the teams to bring the stipulations to the attention of the Court as the situation requires.

APPLICABLE LAW²

Direct and Circumstantial Evidence

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of a witness about what the witness personally observed.

Circumstantial evidence is indirect evidence that gives you clues about what happened. Circumstantial evidence is proof of a fact, or a group of facts, that cause you to conclude that another fact exists. It is for you to decide whether a fact has been proved by circumstantial evidence. If you base your decision upon circumstantial evidence, you must be convinced that the conclusion you reach is more probable than any other explanation.

[For example, if a witness testified that the witness saw it raining outside, that would be direct evidence that it was raining. If a witness testified that the witness saw someone enter a room wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.]

The law permits equal weight to be given to both types of evidence, but it is for you to decide how much weight to give any evidence. In making your decision, you must consider all the evidence in light of reason, experience and common sense.

Preponderance of the Evidence

In this action, the plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the allegations contained in the plaintiff's complaint. The term "preponderance of the evidence" means that amount of evidence that causes you to conclude that an allegation is probably true. To prove an allegation by a preponderance of the evidence, a party must convince you that the allegation is more likely true than not true. If the evidence on a particular issue is equally balanced, that issue has not been proven by a preponderance of the evidence and the party having the burden of proving that issue has failed.

Contract Definition

A contract is an agreement or exchange of promises between two or more persons to do or not to do certain things. This agreement or exchange of promises can be oral or in writing and must be supported by something of value. The requirements for a valid contract are an offer, an acceptance, consideration, competent parties, and a legal purpose.

Fire Insurance Claim

² Adopted by the Tennessee High School Mock Trial Committee, and based upon Tennessee's Pattern Jury Instructions.

In this case, the insurance company, Mid-South Insurance Liability Company, Inc. has brought a declaratory judgment action against the policyholder, Denim N' More, Inc. seeking a judgment from the Circuit Court that it is not responsible for making any payments under the policy because of the nature of the loss.

Claim of Arson

A policyholder who commits arson cannot recover under an insurance policy. To establish the defense of arson, the insurance company has the burden of proving that the policyholder intentionally or willfully set fire to the insured property or participated in or consented to the willful burning of the property. It is not necessary that the policyholder be the person who actually starts the fire.

Arson may be proved by direct or circumstantial evidence. When relying on circumstantial evidence to establish the defense of arson, the following must be proved:

1. The insured property was intentionally burned;
2. The policyholder had an opportunity to set the fire or to have it set by some other person; and
3. The policyholder had a motive for setting the fire.

Whether circumstantial evidence has been proved and whether that evidence establishes the defense of arson is for you to decide.

**WITNESSES FOR PLAINTIFF MID-SOUTH
INSURANCE LIABILITY COMPANY, INC.**

●NOEL E.R. DONOVAN●

My name is Noel E. R. Donovan. I am a Certified Public Accountant (CPA) and a member of the American Society of Appraisers (ASA). While I am not an accredited member of the Business Valuation Section of the ASA, I am fully authorized to conduct business valuations, and I do so as a regular part of my business.

I generally conduct business valuations for persons who are undergoing a divorce and need a value established for purposes of splitting marital property. For example, if I value the business of one spouse at \$1.2 million, the court will consider that value as assets. Since you can't actually divide the business, the court will usually look to even up the distribution of assets by, for example, giving the other spouse the house and cash accounts.

I spend a lot of time valuing professional services businesses, such as those owned by doctors, lawyers, and real estate agents. Usually, these businesses derive the bulk of their value from goodwill and are expected to continue in operation after the divorce as before, with no change in the persons who are running the business or the services that are being offered.

Mid-South Insurance Liability Company retained me to review the financial report and appraisal that was prepared for Denim N' More by AAA CPA. I receive a flat fee of \$1000 to review an appraisal. If I am subsequently engaged to testify, I am compensated at the rate of \$250 per hour plus expenses.

I reviewed the AAA CPA report, and I undertook additional research, including surveying the local and regional economic reports, as well as any available data on comparable transactions in the textile industry. Since the AAA CPA report assumed a cash accounting basis, I did the same, although it is true that had Denim N' More used an accrual accounting basis. My figures for valuing the business could have been higher because I would have included the full value of any unpaid accounts.

My review of the AAA CPA appraisal leads me to believe that it is largely unreliable as it overstates the value of the business as an ongoing concern. It does not acknowledge the age of the accounts receivable. It does not examine the regional or national economies. Additionally, the report was simply based upon information provided by Jesse Stewart to AAA CPA. Given that Jesse Stewart has been investigated for arson, I would imagine that the facts Stewart provided to AAA CPA were likely tilted in Stewart's favor. Finally, the report does not take into consideration the fact that corporate orders for textiles such as uniforms have been falling precipitously during the last nine quarters. In my opinion, Denim N' More was losing money, and practically the only demonstrable value in the business was the value of the real estate upon which the factory sat.

Regarding the accounts receivable, the AAA CPA report stated that Denim N' More was owed \$250,000 by its biggest customer, Janitors Iz Us. However, as of today, that company is in

bankruptcy proceedings. So, in order to collect any of that money, Denim N' More would likely have to engage counsel and file its claim as a creditor in the bankruptcy litigation. I am not a lawyer, but I would imagine that filing such a claim is very expensive and that Denim N' More probably wouldn't be able to get any money out of it.

While the bankruptcy took place after the fire that destroyed the Denim N' More Factory, the Janitors Iz Us account was past due over 250 days before the fire. As the age of an Account Receivable goes up, the less likely it is that the account will actually be recoverable. Accordingly, the value of the Janitors Iz Us account receivable should have been adjusted downward, perhaps as low as 60 cents on the dollar.

I am also concerned about the level of debt as indicated by the AAA CPA report. The debt amount listed certainly seems reasonable for a textile manufacture with a long production history and good relationships with its suppliers and clients. (Of course, since only the monthly debt service amount was presented, I am forced to guess at the total debt load). However, the debt is listed as belonging to denim n more/Jesse Stewart. This is not standard notation in a professional valuation report.

I can only assume this notation means that Jesse Stewart was operating as a sole proprietor and that the debt of the company was actually personal debt. If Jesse Stewart had other personal debts (and most persons have individual debt), then it is likely that those debts, while unrelated to the business, could negatively impact the business's cash flow. My opinion could be changed on this, however, if it could be demonstrated that Jesse Stewart was merely a guarantor for the debt of Denim N' More.

My review of local and regional economic reports demonstrates that domestic corporations are simply no longer ordering uniforms for their employees. Total corporate textile orders have fallen 75 percent over nine quarters, and the forecast is that orders will remain flat for at least the next year. It is my understanding that this is a cost-saving measure and that companies are now requiring employees to adhere to less stringent dress requirements. For example, where in the past a janitor might be outfitted with company-issue denim shirt, work pants, and hat, now companies simply require a polo in a solid color. Given that Denim N' More manufactured primarily for corporate clients, it is unlikely that its past revenue could be considered to be a reasonable basis for projecting future revenue, unless the business was retooled somehow. This would be possible given that the manufacturing equipment is practically new, so reprogramming some manufacturing functions would likely not be terribly time-consuming.

Goodwill should not have been considered at all in the calculation of the company's value. Goodwill matters heavily in service-based industries, but textile manufacturers are largely fungible. Thus, the determination of value attributed to Goodwill was improper.

The report also has other methodological errors. While professional standards provide appraisers with some leeway in determining which valuation methods to use and how to

weight those calculations, it is customary to notate the percentage weight afforded to each calculation. The report doesn't do that, however, and thus the reader is left to guess at how the final appraisal value was reached.

To sum, it simply does not seem as if there is enough total information to inform the AAA CPA report, and I cannot tell how AAA CPA weighted the information it used in order to come up with its valuation number. Moreover, without independent verification of the information referenced in the report, the value can hardly be more than speculative at best. While the scope of my engagement is merely to analyze the existing report and not value the business myself, based upon the report and my own research, I find it hard to believe there is any value in the business.

●ANDY BURNS ●

My name is Andy Burns. I am a Certified Fire and Explosion Investigator, a Certified Hazardous Materials Technician, a Certified Fire Fighter, and I hold and maintain a State of Tennessee Private Investigator License.

As my CV details, I am interested and educated in all things fire. I started my career in the United States Air Force, where I was trained in Hazardous Materials programs, and where I worked in fire suppression for four years. I also became a fire fighter, certified by the United States Department of Defense. Talk about a proud day! After an honorable discharge from the military, I decided it was time to head back home to Tennessee. I enrolled in Best State Community College and received my Associate Degree in Fire Science in 1999. I was then certified by the Tennessee State Fire Commission as a fire fighter, and I began working for the Mont' Serrat, Tennessee Fire Department in 2000. Throughout my career with Mont' Serrat, I have taken numerous training courses (even taught a few) and achieved many certifications, including Modern Techniques of Arson Investigation. In fact, I've taken that course annually since 2003. Although I love working as a fire fighter for Mont' Serrat, at the urging of my supervisors, I decided to open my own fire investigation firm in 2002, right before I earned my Bachelor's Degree in Fire Science Technology from the Big Orange University. See, my supervisors noticed that I had a knack for determining causes and origins of fires, and thought that having my own firm would not only help me earn some extra money, but also help me be a better fire fighter. Winning all the way around!

Since 2002, Fires By Burns Investigations has investigated nearly 100 fire scenes. For lots of these, I've ended up testifying in court about my findings. Each time, I've been deemed an "expert witness." Still makes me feel fancy, no matter how many times it happens. I'm even a member of the International Association of Cause and Origin Experts and the International Association of Arson Investigators.

Anyway, I got a call on June 16, 2011 from Mid-South Liability Insurance Company to go check out a scene at the Denim N' More clothing factory at 1001 Jeans Avenue in Mont' Serrat, Tennessee. Once I got there the next morning, I was met by Investigator Michael Johnson, who is the lead investigator for the Shrader County Sheriff's Office and Yağmur Merteuil, the staff investigator for Mid-South. Investigator Johnson told me that at approximately 10:20 p.m. the evening before, the Mont' Serrat Fire Department had gotten a call that smoke was coming from the factory. The fire department arrived at 10:30 that evening, and battled the blaze for over 13 hours! Investigator Johnson and Merteuil and I met with Captain Tom Anderson of the Mont' Serrat Fire Department, and he told us that when his crew arrived, the rear portion of the building was completely engulfed in flames. I knew right away that something was up, because with the weather being as nice as it was that night, a fire doesn't normally just burn for that long without some kind of booster, if you know what I mean. Plus, I'd worked with Mike and Tom for years, and I knew that 13 hours was a long time to be working on a blaze for a building that size. I mean, unless they're slowing down in their old age, it shouldn't take them

that long to put out a fire. So, that already led me to believe that someone had intentionally burned the place down. I admire Mike and Tom a lot, and I'd hate to think that a run of the mill cigarette ignition could take so much of their time.

So I began my investigation of the building, which was irregularly shaped and kind of long. I knew that the business makes jeans and other clothing, which is important to keep in mind when you're considering what things are going to be burning inside. I began at the main entrance on the south side of the building. Immediately, I could tell that there was smoke damage everywhere. The building was made out of wood and concrete cinder blocks, and everything was covered in soot. I moved west and noticed more smoke damage. On the west side was where the furnace was. It was intact, but also covered in soot from the smoke.

I then crossed over to the east side of the building – or what was left of it. It was completely destroyed. From my investigation, and from talking to the owner of the building, Jesse Stewart, I discovered that this section was used to house raw materials for textile production. Of course, cotton and other textiles are flammable, but on their own, shouldn't have caused a fire to burn so long.

I noticed, obviously, that the lowest and deepest charring had occurred in this area. I examined the floor for burn patterns. I immediately noticed a "puddling" effect, which indicated the fire's origin. I would have expected to also find V-shaped burn patterns on the floor, which would indicate the origin of the fire, and which is usually consistent with arson. I didn't find any such patterns, but this does not rule out arson, as the long burn time in this fire could have destroyed those patterns. I also took scrape samples of the concrete floor, which had flaked. Flaking concrete is an indicator of the presence of burning ignitable liquids. The labs came back and showed acetone. While I am aware that acetone can be used as a solvent in the process of textile manufacturing, because of its flammability, acetone is not usually stored with raw materials.

I think the most notable thing I noticed during my investigation was not so much the charred room. I've seen those hundreds of times, of course. But as with all investigations, I looked to see if there was a smoke alarm/detector system. There was. But that's not the weird thing. The weird thing is that it wasn't functioning, and hadn't functioned at the time of the fire. The Mont' Serrat Fire Department had done routine checks on it since its installation back in 2001, and it was always found to be functioning. In fact, it had been manually turned off.

The overwhelming physical evidence, along with the fact that the fire alarm had been disabled, led me to my conclusion that this fire was NOT accidental. I know that the Mont' Serrat Fire Department wasn't able to reach a conclusion regarding how the fire was set, but, hey, they don't have me working for them anymore!

●YAĞMUR MERTEUIL●

My name is Yağmur Merteuil and I am an Investigator with Mid-South Liability Insurance Company. I have been employed with MSL for approximately five years. I have been working as an investigator in their Fire Loss Division for approximately 18 months. Prior to working in the Fire Loss Division, I primarily worked on cases involving disputes over life insurance policies. I love the opportunity to investigate situations to determine what “really” occurred. And, under my watch, we reduced the number of life insurance payouts by 31 percent in the southwest district, including Tennessee, Mississippi, and Louisiana.

Upon transferring to the Fire Loss Division, I took a six-week training course, which introduced me to the techniques that investigators use to determine the cause and nature of the fire. To be clear, I am not a cause or origin expert; however, I use many of the scientific skills, in conjunction with my fact investigation, to make findings of fact, which are then submitted to my employer for consideration.

While I excel at my job, I never imagined that I would be involved in something as plebeian as investigating cases involving suspected arson during my studies.

Growing up, I spent time with my mother in Istanbul, and summered with my father in the Picardie region of France. I studied theology and nonsecular art of the late medieval period at Collège de Sorbonne. I dreamed of working in one of the great museums dedicated to man’s devotion to religion. During the second summer of my university experience, I interned for PDT Art Insurance Company in the UK. I had the opportunity to work on cases involving international intrigue and fine art. I was successful in my internship, and believed that as an investigator for a high-end art insurance company, I would satisfy my desire for travel and excitement, while allowing me to work with my life’s passion, art. Love brought me to New Orleans, while, unfortunately; heartbreak and a weak international economy have kept me here.

I have been involved with this case from the beginning. The fire occurred at Denim N’ More during the late evening of June 15 of this year. The claim for insurance benefits came in the night of the fire from the company’s owner, Jesse Stewart, who sought the full policy amount, \$12,850,000.00. At that time, the county sheriff’s office was investigating the cause of the fire, which ultimately was deemed inconclusive. But because of the on-going investigation by law enforcement and the relatively large size of the claim, my supervisors asked that I travel to Mont’ Serrat to make a determination as to the cause of the fire and whether MSL should pay the policy.

When I arrived at the scene, there was still visible smoldering occurring at the part of the factory where, I learned, raw materials were housed. During my initial tour of the facility, Stewart’s assistant Stacy Summers gave me a lay of the land. As I learned, the warehouse area of the complex where raw materials are stored also serves as a “catch all” storage area for

other materials, including some of the industrial solvents used in cleaning and maintaining the complex.

The warehouse portion of the complex backs up to an overgrown lot, which is separated from Denim N' More's complex by a standard six foot chain link fence with one inch "three wire" barbed wire at the top. There is an entrance/exit to the warehouse facing the rear fencing, which I learned was an entrance very near to a break room for Denim 'N More employees.

While most of the warehouse portion of the complex has industrial polished concrete floors, the aforementioned break room had commercial grade carpeting. Immediately upon entering the break room, I noticed what I believed to be an ignitable liquid pour pattern. This occurs when an ignitable liquid is poured on to a surface such as carpeting. The liquid often soaks into the carpet and/or pad. As the fire burns, the intensity of the fire echoes the amount of ignitable liquid and forms a discernable pour pattern. I also used a portable hydrocarbon sniffer to determine whether the vapor in the area affected by the fire was consistent with vapor from an accelerant such as gasoline. Based on the readings I took, I determined that, in fact, gasoline had been used as an accelerant in the fire. I immediately notified the cause and origin expert, Andy Burns. Needless to say, Burns was more than impressed with my sleuthing skills. While he never memorialized my findings in the report, we all agree that the fire was intentionally set and incendiary in nature.

I interviewed several individuals to determine who had the motive and opportunity to set the fire. One such interview was with Stacy Summers, Stewart's assistant. In furtherance of the objectives of that interview, I surreptitiously recorded our interview, which was later transcribed by a court reporter. I learned from Stacy, after some prodding, that Stacy was in a romantic relationship with Jesse Stewart, who, of course, was and is married. Stewart had, based on my observations, instilled a sense of superiority in Summers, who was lavished with professional responsibilities far above pay grade, and was rewarded with increased remuneration and expensive gifts. These gifts and pay raises were, as we now understand, contrary to the economic viability of Stewart and Denim N' More. Summers articulated a great sense of loyalty to Stewart, and believed Stewart to be beyond reproach. I believe that Stewart caused the fire that destroyed parts of Denim N' More, and Summers was either complicit or ignorant – either is a possibility.

I learned that, immediately prior to the fire, Denim N' More had begun software updates for their phone systems, including the system designed to automatically alert authorities of such occurrences as break-ins and fires. These upgrades did cause the phone systems to be down for several hours. I found it strange that such an invasive upgrade was scheduled during the week. However, by the close of business on the 15th, the phone lines were working, at least in terms of Denim N' More employees being able to make and receive calls to the corporate lines. What did not work, however, was the software designed to immediately alert authorities of fire. Upon investigation of the scene it appears that the smoke

detectors were unplugged, which is suspicious in that they did not need to be unplugged in order to update the software.

Based on information provided by MSL's cause and origin expert, Andy Burns, it appears that there was an approximate one hour and 20 minute delay between the start of the fire and the arrival of the fire department. Indeed, the fire department only learned of the fire because of the call of a third party bystander that was driving by Denim N' More.

I knew that it could not be a coincidence that the fire alarms seemed to be manually disabled, and a fire occurred immediately thereafter. I approached several employees of Denim N' More. My lead came, however, from one employee's guilty conscious. While I was talking with some other employees at a local Mont' Serrat eatery, the Meshach, Prometheus Rae approached me and asked to talk in private. Mr. Rae told me that he was eaten up with guilt over something "awful" that he had done for Jesse Stewart. He told me that he was promised enough money to get out of debt quickly, if he acted as "Stewart's accomplice" – his words, not mine. He also told me that he was the "man on the ground," while Stewart was going to put some distance between him/her and the job. Before Rae could get any further, he was approached by a woman who I know now was his estranged wife, Semele Rae. They got into a loud argument and then Rae excused himself and left the eatery.

I got Mr. Rae's address and went to interview him the next day. Unfortunately, I learned that immediately after leaving the Meshach, Mr. Rae was struck on the head by a meteorite, causing massive head trauma and near immediate death. I got the message loud and clear, however.

Compounding all of this information, I learned that Stewart had taken an impromptu trip to a second home in Kentucky at the time of the fire. No one seemed to be aware that Stewart was out of the state at that time, which seemed strange. Of course, if you were putting some distance between you and the job, this all seems very logical, doesn't it?

Based on the totality of information available to me, I ultimately recommended that MSL not pay the policy. I believed that there was more than enough evidence to support the fact that Stewart, in concert with who-knows-how-many others, set the fire intentionally.

**WITNESSES FOR
DEFENDANT DENIM N' MOORE, INC.**

● **JESSE E. STEWART** ●

My name is Jesse Ewell Stewart. Yes, you have permission to record this statement. I live in Shradler County, Tennessee, where I've lived for nearly all of my 59 years. No, my spouse doesn't own any part of the business. Yeah, I've been married once before, but my ex and I get along great. We don't see much of each other, but we're on good terms.

No, I have no other source of income apart from Denim N' More. I don't own any other property. Along with a couple of other investors, I began Denim N' More way back in 1978. I was always a stockholder, but as the company prospered, I bought out the other two investors' stock holdings, and by 1995 was the sole shareholder. I'm also the sole owner, through J. Stewart Properties, LLC, of the land where Denim N' More sits. I created the LLC on my accountant's advice due to tax advantages. Who knows – I don't have the time to follow all that complicated tax stuff.

My current spouse, Avery, is a CPA who runs a tax service just across the state line. Avery also provides payroll services to the local minor-league baseball team, so Avery's pretty busy from March through August and spends a lot of time at the office. I typically leave the office between 3:00 and 4:00 p.m. on Friday afternoons so I can make the drive up, and we can spend the weekends together. I generally get up early and drive back on Monday mornings.

Typically, at the end of the day, either I, my assistant, or the warehouse foreman locks up the building and sets the alarm. It is my assistant's job to disable the alarm every morning. The alarm system we used in this building covered break-ins and fire.

No, there had never been any burglaries or attempted break-ins at Denim N' More, as far as I know. Once, one of my employee's vehicles was broken into while in the parking lot. We were able to watch it on surveillance video, but the quality was so bad that we couldn't identify the thief. That's been a few years ago.

When the fire happened, I got a call from my assistant. I depend pretty heavily on my assistant, who also functions as my human resources manager. I left the Kentucky house about 10:45 p.m. Friday night and got here about 1:30 a.m. Saturday morning. The firefighter in charge told me that when they arrived, the very back door was open. You can see it on the diagram I've brought. They couldn't tell me whether that's where someone broke into the building, but they confirmed that it was open when they got there.

No, we really didn't have electrical problems apart from the stuff everybody deals with. For example, sometimes a transformer at some substation would malfunction and the utility company would have to go repair it.

We didn't have many disgruntled employees that I know of. Most of our employees have been with Denim N' More for a long time. The last time I fired someone was about a

month ago, but it wasn't a particularly bad situation or ending to the employment. No, I don't have any enemies or someone "out to get me" that I know of. Yeah, the police and fire people told me that the sprinkler system was off, fire alarms were disabled, stuff like that. Whoever did that was a sick person. Because that's serious stuff and I may not stay – Sorry, I get a little emotional when I talk about it because I've spent over 30 years of my life in that business, and I don't know who would do something like that. It makes me sick.

Jamie Whineshack is a great *employee*. The problem with Jamie is a terrible personality. Truthfully, I loathe seeing that face coming down the hallway. But WONDERFUL employee! I know that I should have promoted Jamie, the work product is top-notch, but that rank personality just grates on my soul. I know Jamie holds it against me that I haven't offered a promotion, but I am the boss, and that's the perk of being the boss. Plus Jamie keeps showing up, so I think that secretly he/she wants to stay in that job.

Prometheus Rae...I have no idea who that is. Could be an employee, we have about 100 now, but I don't know that person at all.

The software associated with our phones and, by extension, alarms was upgraded a day or so before the fire – not clear on exactly when. I don't see anything strange about a necessary update to our software, and I certainly was not going to let IT people roam around the complex during the weekend when I was not around to check in on the progress. However, I never authorized or was aware of any part of the fire alarm being unplugged or disabled.

As you can see from the diagram I've provided, there are several entrances to the Denim N' More building. At just about every entrance, a person entering would trip a sensor on the alarm system. The alarm system is monitored by an alarm company, who then calls me or my assistant if it's triggered. One door doesn't have a sensor, because we lease out some space to a screen printing company. Those guys come in a specific door to get to their little part of the building.

I've never filed any fire claims before, either with Denim N' More or as an individual. While times had been tough recently, I was still doing okay financially. Sure, some major clients were having cash flow problems, but who hasn't been the last few years. In fact, I had been toying with the idea of selling the place. I even hired a company to do a listing price appraisal for me. But, I mean, I wouldn't have sold it if I couldn't have made money off of it. I was pretty pleased with the valuation report that came in from the company I hired.

We bought this building back in 2003, and we upgraded all of our production equipment not too long after that. We asked the fire marshal to come out and inspect the building and property and make sure we were up to code. That's why we took the pre-fire photos. We did have to make a few changes. For example, we used to stack materials and products 12 or 14 feet high, but under the new code, we can only stack to 10 feet, so we had to make some revisions to our equipment. My understanding is that if you accidently stack too high, it's a danger of falling and hurting someone. The code inspection also revealed that we shouldn't

have been storing our chemicals so close to our raw materials. We fixed that problem. Though, I will say that with a busy company, sometimes you have to store things where there is room, and where you can get to them quickly. So, I would say that from time to time chemicals were probably still stored near the raw materials. Our sprinkler system also had some issues, so we spent about \$40,000 bringing it up to code.

We had some problems a few months ago with raccoons setting off the alarm. We kept getting calls from the company, so we finally called an exterminator who caught the rascals.

Yeah, we have to make a monthly payment on our loans. Most specifically, there's the property and building mortgage. J. Stewart Properties, like we talked about before, is the owner, but it's strictly a pass-through to me. The first mortgage is with Mid-South Bank for \$10,000 a month, and the second mortgage is with Shrader County Bank and Trust for \$6,500 a month. That's principal and interest. We also have a revolving line of credit – it's essentially a cash management program backed up by the inventories and receivables. That allows us to borrow up to \$2 million when we need it. This is about our highest point for the year; at best guess, we owe about \$1,925,000 on the account. It's so high because of all the inventory we've been building up over the past few weeks, getting ready for the fall rush – at least until the fire scorched this company's hopes and dreams.

We're only in arrears for one month on an account. We got a great quote from another financial institution that was going to save us about \$6,000 a month on our mortgage payments, but we didn't get the loan approved in time, so we're a month late. No big deal, though, I'm told. We're not in foreclosure or anything, and we have great relationships with the banks we use.

Our current financial status isn't unexpected or even unusual. Utility companies, some of our big clients, typically purchase new uniforms during the first few weeks of the year, and janitorial clients purchase in the spring and fall. Our dealers and sales reps are trying their best to collect money for us, but it's tough, given the yearly cycles. Everybody in the business understands the cycle. And because of the current economic climate, some clients are cutting back on the goods we provide, or on some "frills," like embroidering, logos, and so on. But, our equipment is practically new, and everyone's always going to need jeans. So, we could pretty easily shift from primarily special orders to a more generic denim product for a big box store if we really needed to. There are no liens or suits pending against me or Denim N' More. We've never filed bankruptcy or been audited by the IRS.

After the fire, I found some personal items missing from the fire-proof safe in my office. Most importantly, I had a State University championship ring that I was awarded. A couple of expensive wristwatches from big bowl games were gone, as was an autographed football. I have also included claims for those in my claim for the fire damage, because I can only assume that whoever broke in to steal those items is responsible for the fire, whether or not the fire was set intentionally.

Actually, I went today to look at two other facilities that we might be able to use. We still have orders pending, and I fully intend to be back in business as soon as I can. It will probably be a matter of when the insurance money comes through so I can fund my payroll, rent equipment, and purchase raw material.

There aren't any health, sanitation, building or zoning violations in place—or, at least, there weren't. Never been an issue. In fact, along with the refinancing we discussed earlier, I had an environmental study done that we passed with flying colors.

I've brought several photos. Some are photos I took a few months before the fire. I've also brought photos I took the day after the fire, after everything had cooled off. I went through and labeled them to clarify what they show. Horrible, isn't it.

Yes, the sprinkler master valve was held in the "on" position by a lock. Our maintenance supervisor had the only key. The fire department told me they couldn't find the lock. But it could have been cut off by the fire department – who knows? It was a crazy night.

The master alarm box was destroyed by whoever broke in, as was the video recording system. Well, I guess you kind of have to know what you're doing to find those things, but they weren't hidden or locked up. There was also a lot of copper wiring missing from the building, especially on the roof where the heavy gauge cables for the air conditioning units were. Scrap copper can be recycled for lots of money these days - \$2.30 to \$2.40 a pound. Maybe robbery was the motive for this fire. Between the memorabilia displayed in my office and the copper, it could have been a pretty good haul.

Yes, I had a little run-in with the law several years ago. Denim N' More had been doing very well, and I decided to use some of the income to make some quick cash in the stock market on the advice of a friend. He gave me lots of information about which stocks to buy. I was a little concerned, but he assured me it was ok. Long story short, I was charged with several counts of insider trading. I still believe I didn't do anything wrong, but I really didn't want to go through the bad publicity of a trial. The assistant U.S. Attorney offered to dismiss all the charges except for the most minor one, so I plead guilty to one count. That was all the way back in 1992. Although my attorney tells me a felony like that could have carried some jail time, I paid a fine and some restitution, and that was the end of it.

Yes, I've done my best to answer all of your questions fully and truthfully.

● STACY SUMMERS ●

My name is Stacy Summers. I am 31 years old and work as an executive assistant for Denim N' More, Inc. I have worked for Denim N' More, Inc. and the owner, Jesse Stewart, for the past 10 years. Overall, I would say Jesse Stewart is a wonderful boss and truly wonderful person. But, like with all bosses, there are days where things may not go well, and it seems that, like most assistants, I am the one that takes the blame. But, I have been doing this job for 10 years so I guess it's not that bad.

The first time I met Jesse was at a party one night 10 years ago and, amazingly, I was offered my job that very evening. I was shocked by this considering I had no experience as an assistant but Stewart said I was very smart and would catch on quickly. Years later, Jesse told me that other employees said that we were having an ongoing affair and it started that night at the party. Of course, that wasn't true. It was just workplace gossip that goes on at every office.

Most of my duties include answering the phones, setting appointments and meeting times, drafting letters for Jesse and pretty much helping in any area that he/she needs help. I suppose that I also function as an office manager, and am the primary point person for most of the administrative projects at Denim N' More. I am paid on a bi-weekly basis. I receive a normal salary for someone with my experience – I gross approximately \$8,300 per month. From time to time, such as on May 30th of this year, Jesse gives me gifts as a way to say thank you for everything. I fancy myself to have a discerning taste in watches, so Jesse gave me an amazing Audio Puget watch.

This past year, there has been much more stress around the office. Part of this is due to the strained relationship of one of the employees, Jamie Whineshack, and Jesse. Jamie is a great employee, but Jesse has probably overlooked him/her once too often for a raise. Also, I know the business is in poor shape financially because of the economy and in need of a loan. I know that Jesse has looked into getting a loan, but I do not know the status.

I was surprised to learn of Jesse's trip to Kentucky on the evening of the fire. Jesse always tells me where he/she is going and I am always on top of the boss's calendar. I supposed it couldn't be too strange, however, Jesse and Avery love one another, and they would never split up, for any reason, at least that is what I am learning.

Anyway, on June 15th, I worked like I do every other weekday. One thing I remember was that Jesse's door was closed that day. This was very rare so I thought he/she may be waiting on an important call from the bank about the loan. Jesse left early and I assume went to Kentucky. That was common on Fridays. I was actually surprised Jesse worked for as long as he/she did, but I know that he/she wanted to oversee the IT people upgrading our telephone software. Once they were done, and everything was back to normal with the phones, I suppose Jesse decided to head out.

Denim N' More is one of those places where, when the boss leaves, work effort kind of trails off. That's what happened on June 15th. I remember that most of the workers stayed till about 4:30 to 4:45 p.m. that day and then left early. I stayed until my normal leaving time, 5:00 p.m., and then began to pack my things to go home. Normally, Jesse is responsible for locking the building, but, since he/she was not there that day, it was my responsibility. By locking the door, people could still leave the building, but no one could get in without a key. I am unaware whether anyone other than Jesse and me had a key. As I was leaving the building I noticed Jamie Whineshack was still at work. I told Jamie good night, left the building and locked the door at approximately 5:05 p.m. I went home, ate dinner and watched TV, my favorite television show – *Rescue Me, Please*, and then prepared for bed.

As I was getting ready for bed, I realized that I forgot my bag at work. I left my house and drove to the office to pick it up. I arrived at the office at approximately 8:45 p.m. I remember being amazed to see that Jamie Whineshack's car was still in the parking lot. I entered the building and retrieved my bag from my office. All the lights in the building were turned off except one in the rear portion of the building where the raw materials were stored. I remember having an uneasy feeling about being alone in the building so I quickly grabbed my bag and hurriedly walked to the front door. I left the building and walked to my car to go home. It was approximately 9:00 p.m. I cannot remember whether I locked the door. The next morning I received a call from Jesse Stewart saying that there had been a fire at the office. Jesse sounded devastated, and I was shocked. I rushed to Jesse's side and pledged to help Denim N' More rise from the ashes!

I believe with all my heart that Jesse treats the business like a baby and would never do anything to hurt it; especially setting the building on fire. I also know that Jesse would not do anything intentionally to cause me, or any of the other employees, to lose our jobs.

● JAMIE WHINESHACK ●

My name is Jamie Whineshack. I have been an employee at Denim N' More for five years. Prior to that, I received an Associate's Degree in Accounting from Atlantica Community College. When I began with Denim N' More, I worked in the front office and was technically only a level II administrative assistant, even though I was doing everyone else's job. If you needed something done, I could do it – I guess you could say I carried the place. Approximately three-and-half years ago, I transitioned into a job working with the plant manager who oversaw the actual sewing. Once again, I was doing most of the work.

When I heard there might be a senior level administrator position opening up with Denim N' More in the corporate part of the complex, I decided to apply. I know that I have the assets that this company needs – especially if it would like to stay afloat. At the time, my music career hadn't taken off and I had to pay the bills. I mean don't get me wrong I had a few gigs playing some local dive bars but I wasn't rolling in the dough – yet. I am a pretty good musician, but the days when speed metal-bluegrass fusion music was all the rage are sadly behind us. A higher-paying day job would have been manna from heaven.

When I interviewed with Stewart, I was convinced that this was the job for me. Stewart gave me such a sales pitch that I was blown away. Stewart said there was even room for more advancement. Said that that Denim N' More was a business that rewarded hard work and good ideas. I got excited, thought maybe this would be my ticket. I am full of good ideas and I am great with people. My skills were being wasted on the plant floor. Not to mention this could give me a better income until I could make it big with my music.

Unfortunately, I was passed over. And this wasn't the last time. Every time a job opens up in the corporate part of the complex, I apply, and I get passed over. There is no room for growth in the plant – I can't sew! But, I have all the talent for administration.

Stewart told me that it was company policy to do employee reviews every six months. The idea was that promotions and raises would be based on good job performance. Ha – what a joke! Not once in my five years with the company have I gotten a raise or a promotion.

When I got hired, I started out as the level II administrative assistant. I was responsible for helping track invoices and providing general support to the manager. It didn't take much brain power to tackle that job. So me being the kind of person I am, I started looking for other things to do so I wouldn't be bored. Five years later, and I am still an entry-level employee making \$9.00 an hour. The only thing that has changed is that now I do three times the amount of work. I guess the idea of rewarding employees for working hard was not in Stewart's vocabulary.

Don't get me wrong, I thought about quitting a time or two. But let's face it, these days any job is better than no job. The economy was bad and even Denim N' More was cutting jobs.

There was no way I could quit, my landlord is tough and I have to pay rent no matter what, plus I had my eye on a new guitar. Besides I would never find another cake job like this, the work was so easy even a monkey could have done it.

And, even though I wasn't promoted, I was still a good employee. I have always shown up and done my work. I always had good reviews. Take a look at my file and you will see - they were lucky to have me!

I can only remember getting a bad review one time. Earlier last year, I was having some personal issues and I checked myself into this rehab facility. I was only there for a few days before I got myself straightened out, but that meant I was out of work. I explained what was going on and my supervisor claimed to understand but I was marked down anyway. That just shows what kind of "compassionate" boss I had. If you ask me, Stewart and the whole team just didn't like my new lip piercing and were looking for a reason to give me a bad review. It doesn't matter though that was the one and only time that I ever got a bad review.

In 2008, I went through another tough time when I was arrested, charged, and eventually pled guilty to felony forgery. I don't really like talking about that period in my life, but yes, I did forge some documents under the name Blanche Anderson. I wasn't thinking straight, and probably if the truth was known, wanted to get caught.

It seems that Stewart never paid much attention to me, even though I was the best person in that office. Someone Stewart did pay attention to was that assistant, who also functioned as head of HR. You work at a place long enough and get to know the people you work with and let me tell you people talk. I guess it's the same way everywhere. You know that sometimes it's true but sometimes it's just gossip to keep people entertained. I will tell you though, I heard from more than one person there was something going on between them. I don't know exactly what, but they defiantly had a different relationship than Stewart and I had that's for sure. They would all the time go to lunch together and come back smiling and laughing. Stewart has never offered to take me to lunch, not even when I brought business in to the company.

Oh yes, I bring in business. Even though I am working as an entry level employee for the plant manager, when my high school friend opened a new private academy, the Pele Academy, I made sure that they got their janitorial uniforms from Denim N. More. Do you know that I didn't even get a thank you for the new account? Like always, Stewart put a spin on things and took all the credit. I will just be honest with you, after everything I have put up with, Stewart could die a slow, painful death and it wouldn't bother me one bit.

To think all those years I worked for that jerk just to be left without a job. Denim N' More has been closed since the fire happened, the building was totally destroyed. Since then I haven't been able to find work.

The fire happened on June 15th, which was a Friday. That day was pretty normal and I don't remember anything odd going on. I was working on invoices for the latest shipment going out, trying to finish up so I could get out of there – I had a gig that night! That afternoon, a little while after I got back from lunch, I heard Stewart's voice in the front office as I was walking to my desk in the plant. When I walked into the lobby, I saw that Stewart had packed up and was heading out early. This of course did not surprise me in the least. Everyone knew that Stewart took off early on Fridays with or without a good reason. Why not when there were people like me there to pick up the slack.

Anyway, Stewart flashed a smile and headed for the door as I heard "See y'all later, I'm headed for the hills" which is code for him being out of commission until Monday rolls around. I mean it just isn't fair; Stewart hardly ever works and has a life of exorbitant luxury. I work my butt off and still live in my one bedroom loft apartment.

Anyway, like I was saying just a typical Friday. Once Stewart left, the rest of us worked till around 5:00 pm. I usually make it a point to not leave before 5 o'clock. Mostly because I'm worried that someone will tell Stewart that I left early. That day, I clocked out about 5:05 p.m., but waited around for my ride to pick me up – I am too exhausted to drive home after I pour my heart and soul into my speed metal-bluegrass inspired soon-to-be hits. I don't know how long I waited, but I probably ran through a couple of smokes outside in the parking lot. I ran into that awful Stacy Summers while I was waiting, and I said goodnight. I was set to play at The Terminal that night and I really wanted to get ready. Otherwise, it looked to me like the place was pretty much shut down and we were the only ones left. I wasn't paying very good attention because I was in a hurry to get out of there.

I came back and got my car the next day, but found the smoldering ruins of my prison. I love the thought of what the fire did to Stewart, but I don't love the fact that my unemployment benefits don't cover rent and food. I need a job, and would be happy to get back to my desk at Denim N' More. I just hope that Stewart learns to appreciate talent if he can ever manage to get the company back in business.