

**Insurance Contract - The tasting room and winery of a Winchester-area vineyard went up in a spectacular fire after being struck by lightning – in this lawsuit the vineyard sought to enforce the insurance contract**

*Harkness Edwards Vineyard v.*

*Nationwide Agribusiness*, 14-274

Plaintiff: Thomas W. Miller, *Miller*

*Griffin & Marks*, Lexington

Defense: John W. Walters and Drew

Byron Meadows, *Walters Meadows*

*Richardson*, Lexington

Verdict: Defense verdict on

liability; Directed verdict on contract and negligence counts

Court: **Clark, J. Clouse**,  
6-29-16

Cathy and Harky Edwards were the owner-operators of the Harkness Vineyards in 2013. It is located on a farm near Winchester. The vineyard was successful and their wines were acclaimed throughout the region. In February of 2013, Cathy contacted Renee Miller, an insurance agent with the Tim Hamilton Insurance Agency, regarding the procurement of a policy for the winery and tasting room.

Miller procured a policy through Nationwide Agribusiness. The coverage was bound on 2-27-13. In April of 2013, a bill was sent to the vineyard. The Edwardses thought it was too expensive and balked at paying. Nationwide canceled the policy for non-payment on 5-20-13.

However Nationwide still sought to recover the premium for the bound period from 2-27-13 to 5-20-13. The Edwardses didn't want to pay that either and explained they had never given authorization to issue the policy. Nationwide agreed to cancel the policy retroactively after receiving a signed cancellation form on 8-6-13.

In the interim period (as the Edwardses were cancelling the

Nationwide policy), they were also in e-mail discussions with Miller to procure another more affordable policy. Several e-mails were exchanged regarding available coverage options and premiums.

As fate would have it, a thunderstorm rolled through Winchester on the evening of 8-7-13. This was just one day after the retroactive cancellation of the policy. A lightning bolt struck the winery and tasting room. A spectacular fire erupted that could be seen for miles. It was fueled in part by the alcohol that was stored in the room – the winery and tasting room burned to the ground a loss of nearly \$1,000,000 was sustained. It essentially crippled the Harkness Vineyards.

There was also one other interesting fact that occurred in this interim period. In order to retroactively cancel the policy, Nationwide had to send an administrative reinstatement. This was processed as a bill for the February policy. It was sent to the Edwardses two weeks *after* the fire.

In this lawsuit the Edwardses sued on behalf of the winery against the agent, agency and insurer seeking relief in several ways. The first was to simply enforce the contract, it being in place because of the administrative reinstatement. Harkness Vineyards also alleged negligence by Miller in failing to procure coverage. Judge Clouse granted a directed verdict for the defendants on the contract and negligence counts.

The third count (the only count to survive to trial ) was predicated on an equitable theory. The plaintiffs argued that a contract was equitably created and coverage should have been bound because of the e-mail exchanges with the agent. The coverage established by this

equitable theory, the plaintiff argued, should have been for \$575,000. It was argued that Miller's prior pattern of conduct (submitting an unsigned application and failure to collect a down payment) induced the Edwardses to believe that insurance was in place on the date of the fire. The defendants disputed the equity theory.

The jury in this case deliberated some 20 minutes on the single equitable claim. The question was framed for the jury: Did Nationwide by its prior pattern of conduct cause the plaintiffs to reasonably believe they had coverage. The answer was no and the plaintiffs took nothing. A defense judgment was entered.