

Thurs
→ March 84
9 am
13 Feb 84
1 pm

TO: Judge
FROM: Donald
DATE: 6-16-83
RE: 83-26

The Aetna Casualty & Surety Co. v. Don Hayes and Ford Motor Credit
PC, Friday, 6-17-83, at 9:30

Synopsis: In this action plff seeks a declaration of its rights pertaining to liability on an insurance policy issued on a vehicle destroyed by fire. Plff has refused to pay either the owner of the vehicle or the loss payee on the grounds that the owner of the vehicle intentionally burned or caused to be burned the vehicle. The policy of insurance does not cover situations involving arson.

Plff also refuses to pay the financing institution/ loss payee based on the terms of the policy which specify that if the insured misrepresented material facts to the insurer, the policy of insurance is void, and the insurer owes nothing as a result of the fire.

Pending Motions: NONE.

Substantive Issues:

1. What first must be determined is whether the insured was responsible for the fire.
 - a. If so, do the express provisions set out in the policy apply to prohibit coverage?
 - b. Do the policy exclusions also apply with respect to the loss payee?
 - c. Is the insured/vehicle owner liable to the loss payee for the balance due on the contract?

Comments:

1. Everybody has cross-claimed and counterclaimed against everybody else.

Ford Motor Credit counterclaimed against plff for the policy proceeds to the extent of their interest in the vehicle.

Ford Motor Credit cross-claimed against Hayes for the contract balance.

Hayes counterclaims against plff for the policy proceeds.

Hayes cross-claims against FMC alleging that his contractual obligations are fulfilled.