

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR DALLAS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

TRACEY WISE,)
)
 Plaintiff,) Case No. 05-1700
)
 v.)
)
 SASSY'S, INC.,)
)
)
 Defendant.)
 _____)

Prepared by:

**Tracy E. Leduc
Second District Court of Appeals
1700 N. Tampa Street
Tampa FL 33602**

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-and-
Tracy E. Leduc

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STATEMENT OF THE CASE

Tracey Wise has filed a negligence action against Sassy's, Inc., a bar and dance club in Armadillo. The complaint alleges that Sassy's, Inc., failed to maintain its premises in a reasonably safe condition by allowing a band, The Dead Armadillos, to use pyrotechnic devices in the club during a performance and that this negligence resulted in a fire that seriously injured Ms. Wise.

Sassy's, Inc., has filed an answer denying the allegations of the complaint and raising the affirmative defense of negligence of others not parties to this action.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. This case shall be tried on liability only. Should the plaintiff prevail on liability, the question of damages shall be heard by the jury with additional evidence and additional jury instructions at a later date.
3. All witnesses called to testify who have in depositions identified the parties, other individuals, or tangible evidence can, if asked, identify the same at trial.
4. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events and occurrences and to correct the deposition for inaccuracies and completeness before signing the deposition.

5. All depositions were signed under oath.
6. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on the deposition does not comport with signatures or initials located on an exhibit.
7. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
8. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.
9. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).
10. Each party must call the two witnesses listed as that party's witnesses on the witness list.
11. The parties stipulate that all exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

12. It is stipulated that no one shall attempt to contact the problem drafter, Tracy Leduc, about this problem. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

13. 2006 should be the current year in which this case comes to trial.

14. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the plaintiff shall have four minutes to present any pretrial motions; (2) the defendant shall have four minutes to respond to the plaintiff's motion(s); (3) the defendant shall have four minutes to present any pretrial motions; and (4) the plaintiff shall have four minutes to respond to the defendant's motion(s).

15. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

16. No team member is permitted to question any witness or argue to the jury the absence of any photographs of the club after the fire and/or the absence of any product literature for the pyrotechnic devices used during the show.

Substantive Matters

1. In the State of Lone Star, actions at law in circuit court require that the controversy exceed the sum of \$15,000, exclusive of interest, costs, and attorney's

fees. Sassy's, Inc., has stipulated for purposes of the liability portion of this trial that Ms. Wise's claimed damages exceed \$15,000.

2. Motions to dismiss the complaint and motions for summary judgment have been denied by the trial court, and no further motions to dismiss or for summary judgment shall be argued to or heard by the trial judge.

3. Neither strict liability nor negligence per se were pleaded in the complaint; therefore, neither theory of liability shall be raised at trial in any manner.

4. The State of Lone Star is a pure comparative negligence state. The jury shall apportion the percentage of negligence, if any, to the plaintiff, the defendant, and any nonparty alleged by the defendant in its affirmative defenses as being responsible for the injuries.

5. In the case of Chang v. Zoe, 497 Lone Star 935 (1992), the Lone Star Supreme Court held that for a business invitee to prevail on a negligence claim, the business invitee must prove, by a preponderance of the evidence, that the owner or lessor of the premises knew or should have known of the dangerous condition.

6. In the case of Kiernan v. Stacy, 606 Lone Star 727 (1996), the Lone Star Supreme Court held that a jury is permitted to consider the liability of a nonparty, in addition to the liability of the parties, if the defendant has specifically named a nonparty in its affirmative defenses, has alleged how the nonparty caused or contributed to the plaintiff's injuries, and has offered evidence to the jury from which a jury could find

negligence on the part of the nonparty. In the same case, the Lone Star Supreme Court held that this doctrine does not apply to the intentional torts or criminal actions of a nonparty.

7. Dallas County Code Chapter 6.4 provides as follows:

6.4.1 Each pyrotechnic device fired during a performance shall be separated from the audience by at least 15 feet.

* * *

6.4.3 When pyrotechnic devices are used within an enclosed structure, there shall be no glowing or flaming particles within 10 feet of the ceiling or walls of the structure.

8. The plaintiff and defendant agree and stipulate that Mitch Murphy, an employee of Armadillo Enterprises, Inc., was duly licensed by the State of Lone Star and qualified by both training and experience to purchase and set up the pyrotechnic devices that were used during the concert at Sassy's on February 14, 2005. The parties agree and stipulate that Mitch Murphy had approximately ten years' experience with the use of pyrotechnic devices prior to this incident. This stipulation may be read to the jury at the request of either the plaintiff or the defendant.

9. The plaintiff and defendant agree and stipulate that their respective experts examined the remains of the pyrotechnic devices and determined conclusively that no defect in the manufacturing of the pyrotechnic devices existed or contributed in any way to the cause of the fire. This stipulation may be read to the jury at the request of either the plaintiff or defendant.

WITNESS LIST

Witnesses for the Plaintiffs:

1. Dana Walford - Witness***
2. Rupert Rockford - Witness*

Witnesses for the Defendant:

1. Chris Jensen - Witness***
2. Chenille Lane - Witness**

Each team must call witnesses number 1 and 2 listed on its respective witness list.

* This person must be a male.

** This person must be a female.

*** This person may be a male or a female.

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CIVIL DIVISION

TRACEY WISE,)	
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Plaintiff,)	Case No. 05-1700
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v.)	
)	
SASSY'S, INC.,)	
)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Tracey Wise sues Defendant Sassy's, Inc., and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed \$15,000.
2. Tracey Wise has been a resident of Armadillo, Dallas County, State of Lone Star, since 1975.
3. Defendant Sassy's, Inc., is a domestic corporation registered to do and doing business in the State of Lone Star.

4. Defendant Sassy's, Inc., owns and operates a bar and dance club in Armadillo, State of Lone Star, and regularly contracts with live bands to put on performances on the premises.

5. At some point prior to February 14, 2005, Sassy's, Inc., contracted with Armadillo Enterprises, Inc., d/b/a The Dead Armadillos, for The Dead Armadillos to perform at Sassy's, on or about February 14, 2005.

6. Plaintiff Tracey Wise paid for a ticket, which allowed her admission into Sassy's to see The Dead Armadillos' performance.

7. During the concert on the night of February 14, 2005, a member or members of The Dead Armadillos ignited pyrotechnic devices as part of their performance.

8. When the pyrotechnic devices were ignited, they started a fire on the ceiling of the club, which ultimately spread throughout the building.

9. As a direct and proximate result of this fire, Plaintiff Tracey Wise was burned about her face and body, resulting in severe injuries and permanent scarring and disfigurement.

Count I - Negligence

10. The allegations of paragraphs 1 through 9 are incorporated as if fully realleged herein.

11. On or about February 14, 2005, Plaintiff Tracey Wise was a business invitee of Defendant Sassy's, Inc.

12. Defendant Sassy's, Inc., had a duty to maintain and operate its premises in a reasonably safe condition for the benefit of its business invitees.

13. Defendant Sassy's, Inc., knew or reasonably should have known of the danger of a fire occurring during The Dead Armadillos' performance at Sassy's.

14. On or about February 14, 2005, Defendant Sassy's, Inc., breached this duty to maintain its premises in a reasonably safe condition in one or more of the following ways:

a. By negligently permitting employees of Armadillo Enterprises, Inc., to use pyrotechnic devices during the performance.

b. By negligently failing to warn employees of Armadillo Enterprises, Inc., of the existence of highly flammable foam insulation on the ceiling of Sassy's, Inc.

c. By negligently allowing the club to become overcrowded and by blocking exits from the premises with tables and chairs, both of which prevented business invitees from being able to escape the fire once it began.

15. As a direct and proximate result of the negligence of Sassy's, Inc., a fire ensued during The Dead Armadillos' concert on February 14, 2005, from which patrons of Sassy's, Inc., were unable to escape.

16. As a direct and proximate result of the fire, Plaintiff Tracey Wise suffered injuries, including medical expenses, lost wages, loss of future earning capacity, pain and suffering, and loss of enjoyment of life, all of which continue to this day.

WHEREFORE Plaintiff Tracey Wise demands judgment for damages against Defendant Sassy's, Inc., and demands a trial by jury.

Filed this 25th day of April, 2005.

A handwritten signature in cursive script that reads "Linda Jackson". The signature is written in black ink and is positioned above a horizontal line.

Linda Jackson, Esq.
1001 N. Austin Street.
Armadillo, State of Lone Star 74010
(555) 813-2290
Lone Star Bar No. 115358
Attorney for Plaintiff

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ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Defendant Sassy's, Inc., by and through its undersigned attorney, files this its Answer and Affirmative Defenses to the Complaint filed by Plaintiff and states as follows:

1. Admit for jurisdictional purposes only.
2. Admit for jurisdictional purposes only.
3. Admit.
4. Admit.
5. Admit.
6. Admit.

7. Admit pyrotechnic devices were ignited. Otherwise, deny.
8. Admit.
9. Admit Plaintiff was burned about her face and body. Otherwise, deny.

Count I - Negligence

10. Defendant restates its responses to paragraphs 1 through 9 as if fully realleged herein.
11. Admit.
12. Admit.
13. Deny.
14. Deny, including all subparts.
15. Deny.
16. Admit Plaintiff has suffered past medical expenses and past lost wages. Otherwise, deny.

AFFIRMATIVE DEFENSES

Defendant Sassy's, Inc., by and through its undersigned counsel, asserts the following affirmative defense to Plaintiff's Complaint.

First Affirmative Defense On the date, time, and place set forth in the Complaint, the following entity caused or contributed to the injury suffered by Plaintiff

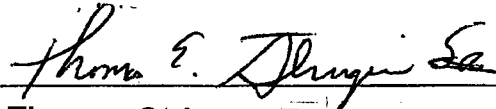
Tracey Wise:

1. Armadillo Enterprises, Inc., d/b/a The Dead Armadillos, through its agents and employees, was negligent in the selection, use, and decision to use pyrotechnic devices during its performance at Sassy's, Inc., when it knew or should have known of the existence of highly flammable insulating foam on the ceiling.
2. The acts of Dusty Stockard constituted a new and independent cause of the fire in question and are the sole proximate cause of Plaintiff's injuries.

WHEREFORE Defendant Sassy's, Inc., demands judgment in its favor against Plaintiff Tracey Wise, and demands a trial by jury.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer and Affirmative Defenses to Complaint has been furnished by U.S. Mail to Linda Jackson, Esq., 1001 N. Austin Street, Armadillo, State of Lone Star, 74010 on this 16th day of May, 2005.



Thomas Stringer, Esq.
1005 E. Memorial Blvd.
Armadillo, State of Lone Star 74010
(813) 555-0660
Lone Star Bar No. 102888
Attorney for Defendant Sassy's, Inc.

DEPOSITION OF DANA WALFORD

Q. Please state your name.

A. My name is Dana Walford.

Q. What is your address?

A. My business address is 1965 Franklin Street, Armadillo, Dallas County, State of Lone Star. Lone Star statutes do not require me to divulge my home address.

Q. How are you employed?

A. I am the deputy fire marshal for Dallas County.

Q. How long have you been so employed?

A. I have been the deputy fire marshal for Dallas County for the past five years.

Q. What experience do you have to be the deputy fire marshal?

A. I started at the fire academy when I graduated from high school in 1982, and I became a firefighter when I graduated from the academy. In 1987, I became certified as a fire investigator as well. In 1990, I became the fire chief for my station. In 1994, I became a district fire chief. Then in 2000, I became the deputy fire marshal for Dallas County.

Q. Did you need any special education to become a fire marshal?

A. Yes. In addition to the training at the fire academy, I had to take additional courses and an examination to be certified as a fire investigator. As a certified investigator, I had to take courses each year to maintain my certification. Most of these dealt with the National Fire Protection Association, or NFPA, codes and how to interpret and apply them. I also went to college in the evenings and obtained my associates degree in business management.

- Q. What types of things are you responsible for as the deputy fire marshal?
- A. The fire marshal's office is responsible for fire investigation, cause and origin investigation, arson investigation, fire prevention and safety in commercial and other high occupancy buildings, fire code enforcement in all types of buildings, and boiler and machinery safety. The fire marshal also works with the police and sheriff on fire investigations in which there might be criminal charges. As the deputy fire marshal for Dallas County, I am responsible for all of these things in Dallas County.
- Q. How many hours of training do you have at this point?
- A. I could not tell you. I have taken a minimum of 30 hours of training each year since I obtained my fire investigator certification. Since 1987, I have investigated thousands of fires.
- Q. Have you ever testified in the past as to your investigation of fires?
- A. Yes, I have testified over 50 times and my opinions as to the cause and origin of fires have been accepted in courts across the State of Lone Star.
- Q. As the fire marshal, do you have any involvement with pyrotechnic displays of any kind?
- A. Yes. Any type of pyrotechnic display, whether indoors or out, requires a permit. That permit must be obtained from my office.
- Q. What is involved in obtaining such a permit?
- A. First, there is a permit application that is required. The application asks for the name of the location where the display will occur, the name of the person in charge of setting up the pyrotechnics, the date and time of the display, a diagram of the area where the pyrotechnics will be, and a copy of the license of the person in charge of setting up the display.

Q. Is anything else required?

A. That is all that is required on the application. Once we get the application, we check the license of the person in charge of the display. We also inspect the location to ensure that it complies with all NFPA code requirements.

Q. What type of requirements are there?

A. The NFPA sets out minimum safe distances for various types of pyrotechnic devices. These have also been incorporated into the Dallas County Code. These include minimum safe distances from the audience, the structure itself, and any stage or props.

Q. Do you check for anything else?

A. Yes. We check the location for exits, exit doors, and aisles to make sure that people can get out if a fire starts. We also check for fire extinguishers and similar fire protection equipment.

Q. Do you do anything else?

A. Yes. We inspect the pyrotechnic devices themselves to ensure that they are being properly used. For example, if the display is going to be inside, we check to make sure that the devices are designed for indoor use. We also check to ensure that they are placed so that any fallout will not cause problems and we indicate the point behind which the audience must be restrained.

Q. In general, who is responsible for obtaining the permit?

A. That depends. Usually, the owner or operator of the location where the display is going to take place applies for the permit. However, it is not unusual for the licensed pyrotechnician to obtain the permit instead. We will work with either one.

Q. I would like to turn your attention to February 14, 2005. Were you on duty that day?

- A. As the deputy fire marshal, I am always on duty. If there is a serious fire, I will be paged.
- Q. Were you paged concerning a fire on February 14, 2005?
- A. Yes, I was. I was paged concerning a fire at Sassy's at approximately 11 p.m. that night.
- Q. What did you do in response to the page?
- A. I drove directly to Sassy's.
- Q. Were you aware of anything unusual happening at Sassy's that night?
- A. I knew that The Dead Armadillos were doing a concert there. I have been a huge fan of theirs since they started here in Armadillo, and I had hoped to go, but the show sold out before I could get tickets.
- Q. What did you discover when you arrived at Sassy's?
- A. Chaos. There were numerous fire engines there and numerous EMT crews. When I arrived, the fire was essentially out and the EMTs were tending to those who were able to get out alive.
- Q. Did you ever obtain a count of how many people were at Sassy's that night?
- A. Based on ticket sales, the number of employees, and the number of band members, I estimated between 180 and 190 people were in the building that night.
- Q. Is that number significant in any way?
- A. It is significant because the maximum occupancy for the building is 175.
- Q. What do you mean by the "maximum occupancy"?
- A. Each commercial building is given a maximum safe occupancy based on the number of square feet, the number and placement of the exits, and the type of uses to which the building will be put.

- Q. So Sassy's had exceeded the maximum safe occupancy on the date of the fire?
- A. Yes, which is usually a first-degree misdemeanor offense, but it is a third-degree felony offense if death or serious injury is involved. It is also a violation of the fire code, with which the owner can be cited.
- Q. Was death or serious injury involved in this case?
- A. Yes. Nineteen people died in the fire and over 75 more had serious injuries.
- Q. Has Sassy's, Inc., been cited for this violation in this case?
- A. We cited them with a violation of the fire code because of this. That is simply a civil infraction punishable by a fine. To the best of my knowledge, Sassy's, Inc., was not charged criminally.
- Q. Why were criminal charges not brought in this case?
- A. I don't know. You would need to speak with the prosecutor's office about that.
- Q. After you got to the scene, what did you do?
- A. I began an investigation into the cause and origin of the fire.
- Q. What did you learn?
- A. After the building cooled enough for us to enter it, we found flash pots on the edge of the remnants of the stage. I was able to determine that the fire started above these devices.
- Q. What are flash pots?
- A. Flash pots are devices that are used with flash powder to produce a flame and a flash of light that is directed upwards.
- Q. Are flash pots considered pyrotechnic devices?
- A. Yes, they are.
- Q. Did you learn anything else during your investigation?

- A. After a number of interviews and my own personal inspection of the debris, I determined that Sassy's had a special sound-insulating foam installed on the ceiling to help with the acoustics in the building. This material is highly flammable, and is where the fire began.
- Q. Had the club or anyone else obtained a permit to use the pyrotechnic devices at Sassy's that night?
- A. No.
- Q. Had you had any contact with anyone at Sassy's about pyrotechnic devices in the past?
- A. Yes. I had had discussions with them about needing to closely monitor the types of devices that could be used because the club was so small and because of the insulating foam.
- Q. Who did you tell that to?
- A. I had had that discussion with both Chris Jensen, who is the owner and manager, and Dusty Stockard, who was the assistant manager.
- Q. When did that conversation take place?
- A. I believe it was sometime during 2004. It was definitely several months before this incident.
- Q. Did you ever tell them that pyrotechnic devices were forbidden in Sassy's?
- A. No. We would never issue a blanket prohibition. We would use the permitting process to determine whether the devices that were going to be used were safe for the location and the crowd.
- Q. As part of your investigation, did you speak with Chris Jensen about the fire?
- A. Yes, I did.

- Q. What did you learn from him?
- A. He told me that he did not know that the band was going to use pyrotechnics.
- Q. Did you question him about anything else?
- A. Yes. We had received reports from some of the patrons that one of the main exits was blocked by tables and chairs. I spoke with Mr. Jensen about this, and he denied that anyone from the club had moved the tables and chairs. He said that patrons must have done it after the show started.
- Q. Fire Marshal Walford, I'm showing you what has been marked as Exhibit A for identification. Do you recognize this?
- A. Yes. This is a diagram of the inside of Sassy's as we found it after the fire.
- Q. Did you prepare this diagram?
- A. Yes, I did.
- Q. Does it accurately reflect the layout and conditions of Sassy's as you found them after the fire?
- A. It does; however, it is not to scale.
- Q. Does this depict one of the exits being blocked?
- A. Yes. Each of the exits is marked by an "X" on the diagram. On the right side of the diagram is an exit door from the club to the outside. That door was blocked by tables and chairs.
- Q. Could you tell when the tables and chairs had been moved?
- A. We could tell from the burn and debris patterns that they had been moved before the fire started.

- Q. Do you know who moved the tables and chairs?
- A. No. We had no way to determine whether they were moved by club personnel before the show or by club patrons once the show began. However, it was the club's responsibility to keep those exits clear regardless of when the items were moved.
- Q. Did you ever interview anyone else about the fire?
- A. I spoke with Rupert Rockford, who was the leader of the band that was playing at Sassy's that night - The Dead Armadillos.
- Q. What did he tell you?
- A. He said that the band always uses pyrotechnics in every show and that Mitch Murphy was properly licensed and had done pyrotechnic work for the band for a number of years. Mr. Murphy was able to locate devices that were rated for indoor use, so they decided to use them during this show.
- Q. Did you ask Mr. Rockford about whether they had agreed with the club to use pyrotechnic devices.
- A. I did, and he showed me a copy of the contract for the performance that said that they were going to use pyrotechnic devices.
- Q. Did you ask Mr. Rockford about the insulating foam?
- A. I did. He said they did not know about it and were never told about it.
- Q. Did you ask Chris Jensen about what you were told by Mr. Rockford?
- A. Yes. Mr. Jensen said that the contract was wrong, and that he had told Mr. Rockford that he would not allow pyrotechnic devices to be used. He admitted that he never told the band or its crew about the insulating foam because he said that they had agreed not to use pyrotechnic devices.
- Q. Fire Marshal Walford, I am showing you what has been marked as Exhibit B for identification. Do you recognize this?

- A. Yes, this is a contract that we found in office files at Sassy's during our investigation into the fire.**
- Q. Is this contract in the same or substantially the same condition as when you found it?**
- A. Yes.**
- Q. Was the contract shown to you by Mr. Rockford during your investigation essentially the same contract as Exhibit B?**
- A. Yes. He had his own copy, but they appeared to be the same.**
- Q. How was it that this contract was not destroyed in the fire?**
- A. This contract, along with some other paperwork, was found in the office area of Sassy's, which was only slightly affected by the fire itself. The damage in the office area was primarily due to water, smoke and debris. These papers were found in a metal file cabinet that had survived the fire.**
- Q. Do you have any knowledge of the terms and conditions of this contract?**
- A. No.**
- Q. Can you identify any of the signatures on this document?**
- A. No.**
- Q. Were you ever able to determine exactly how the fire started?**
- A. I believe so.**
- Q. What is your determination?**
- A. Based on my physical inspection of the site, including the burn patterns, my physical inspection of the remains of the flash pots, my knowledge of the nature of the insulating foam used on Sassy's ceiling, and my interviews with various parties and patrons, I was able to determine that the fire started because the flash pots emitted a flame that got too close to the insulating foam on the ceilings and thus lit it on fire.**

- Q. Could you tell how high the flame actually was?
- A. All of the physical evidence indicates that the flame shot approximately 13 feet into the air.
- Q. How high are the ceilings in Sassy's?
- A. They were 20 feet before the fire.
- Q. Would the fire have started if the insulating foam was not there?
- A. Probably not. The flame would have been closer to the ceiling than what is allowed by the Code and it might have scorched the ceiling, but the fire would not have started.
- Q. Other than removing the foam, is there any other way that the fire itself could have been prevented?
- A. Had Sassy's applied for a permit, the problem with the flash pots and the flame height and the foam would have been discovered during the inspections before the show. We could then have addressed how to fix any problem before the devices were used.
- Q. If the band employees set up the flash pots, shouldn't they be responsible for this fire?
- A. From what I could determine from my investigation, Sassy's did not tell anyone from the band about the insulating foam. Also, as best I can determine, the band had nothing to do with the overcrowding and the blocked exits.
- Q. Did you ever speak with Dusty Stockard about whether he told anyone from the band about the insulating foam before the show?
- A. I would very much like to discuss the cause of the fire with Mr. Stockard; however, I have not been able to locate him.
- Q. What have you done to try to locate Mr. Stockard?

A. I have been working with the Dallas County Sheriff's Office to search every available database. I have contacted the FBI. The Sheriff's Office has also contacted all of Mr. Stockard's known relatives. After a thorough search, we have been unable to locate him, although we are still trying.

Q. Do you have any evidence to indicate that Mr. Stockard had anything to do with the fire itself?

A. No.

Q. Has anyone mentioned tampering to you?

A. Yes. Rupert Rockford mentioned the possibility of Mr. Stockard having tampered with the pyrotechnic devices after they were set up.

Q. Do you believe that is possible?

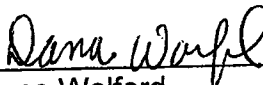
A. Not really.

Q. Why not?

A. I don't really believe that Mr. Stockard would have known how to tamper with a pyrotechnic device even if he had wanted to. These flash pots have covers that go on in a particular way so that they lock once the settings are done. Opening the covers requires a special tool and special knowledge. So, while I want to speak with Mr. Stockard, I seriously doubt that he had anything to do with how the fire actually started.

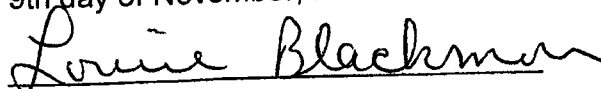
Q. Mr. Walford, is it true that your stepdaughter was one the people injured in the fire?

A. Yes, my stepdaughter Wendy was burned. She has been in and out of the hospital, but she should be okay eventually.



Dana Walford

Sworn to and subscribed before me this
9th day of November, 2005.



Notary Public

DEPOSITION OF RUPERT ROCKFORD

- Q. Please state your name for the record.
- A. Rupert Rockford, but you can call me Rock. That's my stage name.
- Q. What is your current address?
- A. My home address is 11603 Jackson Springs Road in Armadillo, Dallas County, State of Lone Star, but I am rarely there. I am usually on the road with the band.
- Q. Is the band your employer?
- A. My employer is Armadillo Enterprises, Inc. All of the band members and the crew are employees of Armadillo Enterprises.
- Q. What is your position with the band?
- A. I play lead guitar and I do some of the vocals.
- Q. Have you ever held any other positions?
- A. For years as the band was developing a following, I was also the manager. I hired all the crew, arranged the tour bookings, dealt with the venues on our stage set-up, and all of that.
- Q. So you are familiar with interacting with the venues where the band is going to play?
- A. Yes. I know all the ins and outs of what is necessary for staging, lighting, sound, pyrotechnics, and the business end of the deals.
- Q. What is the band's history?

A. I started the band with my friend Andy Little when we were in high school back in the late 1980s. We were a local band for a long time playing mostly covers but writing some of our own material. Then we began to open for bands that came here on tour. In the late 1990s, we were able to put out an album and we were asked to tour as the opening act on several national tours. Our second album, *Roadkill Blues*, which we put out in 2001, went gold. Since that time, we have had continued success with our albums and we have been touring almost constantly.

Q. How did you come to schedule a show at Sassy's?

A. Obviously, given our success, that is not a normal venue for us. We gave up shows in small clubs a long time ago. But our tour was going through the State of Lone Star, and we thought it would be fun to play one gig where the whole thing started. Sassy's was one of the first places that hired us to play, so we decided to do one small show there in addition to another much larger show at the Armadillo Forum.

Q. How did you make contact with Sassy's?

A. I called Chris Jensen. He is the owner and manager of Sassy's.

Q. What did he tell you?

A. He was quite excited that we wanted to do a show at his club. He thought the publicity would be great. He immediately faxed over a standard questionnaire that they used for all bands that were going to play at Sassy's.

Q. Rock, I'm showing you what has been marked as Exhibit C for identification. Do you recognize that?

A. Yes, this is the questionnaire that Mr. Jensen faxed to me and that I completed about the show.

Q. Is that your signature at the bottom?

- A. Yes, it is.**
- Q. Is this questionnaire an accurate reproduction of the one that you returned to Sassy's?**
- A. It is, except for the handwriting on question number 8. I have never seen that before.**
- Q. What does this questionnaire say about using pyrotechnic devices?**
- A. It says that we do intend to use them.**
- Q. Did you ever have a discussion with Mr. Jensen about this response on the form?**
- A. No.**
- Q. Did Mr. Jensen ever say anything to you about insulating foam on the ceilings?**
- A. No.**
- Q. Did you ever ask Mr. Jensen about the foam?**
- A. To be honest, I did not even know it was there until after the fire.**
- Q. Are you familiar with this type of foam?**
- A. I am familiar with insulating foam in general. It is used a lot in small recording studios. But I have never seen it in a club or similar venue.**
- Q. Do you know anything about this type of foam?**
- A. I know that there are several types of this foam, but I don't know anything about it other than that. As I said, we don't deal with it in clubs and other venues where it is of any concern to us.**

- Q. Do you know anything about whether it is flammable?
- A. Well, after the fire, I learned that it was highly flammable. But I had no idea beforehand.
- Q. Going back to the questionnaire, what happened to it after you returned it to Mr. Jensen?
- A. I don't know what all he did with it. I know that it was attached as an exhibit to the contract that we signed to do the show at Sassy's.
- Q. I'm showing you what has been marked as Exhibit B for identification. Can you identify that?
- A. Yes, it is the contract that we signed to do the show at Sassy's.
- Q. Is that your signature on the contract?
- A. Yes, it is.
- Q. Is there anything unusual about this contract?
- A. Not really. It is not as thorough as the ones we sign with larger venues, but it covers most of what we needed.
- Q. What does it say about permits?
- A. The contract says that Sassy's would take care of any permits.
- Q. Did there ever come a time after you signed the contract but before February 14, 2005, when you discussed pyrotechnics with anyone from Sassy's?
- A. No.
- Q. Did you ask Mr. Jensen anything about permits for the pyrotechnics?
- A. No. The contract says that Sassy's will be responsible for obtaining any necessary permits, so I figured he would take care of that.

Q. Did Mitch Murphy ever talk to Mr. Jensen about the pyrotechnic devices that were going to be used?

A. Not to my knowledge.

Q. I want to turn to the day of the show. What did you do during the day?

A. We had a sound check and rehearsal early in the afternoon. The sound guys had been there all morning setting up the sound equipment. The lighting guys had been there. Mitch was there setting up the flash pots. There were some people from the club there working in the kitchen. We did our checks and then decided to drive around town and see how things had changed.

Q. Did anything unusual happen at the sound check?

A. Not that I knew to be unusual at the time

Q. What do you mean?

A. Part way through the sound check, Dusty Stockard came in. All of the band members knew Dusty from high school, and he had been the assistant manager for Sassy's for years. He said hello to everyone, and then he headed back toward the offices. I did not think anything of that at the time. It was not until after the fire that I learned that Mr. Jensen had fired Dusty two days earlier. That's when it hit me that Dusty should not have been there.

Q. Did Dusty say anything to you personally?

A. No. The only thing I heard him say was that he knew this would be a show that everyone would remember.

Q. Did he seem to be acting strangely?

A. Not that I could tell.

Q. What do you recall about the fire?

A. The majority of the show was over. In every show, we set off the pyrotechnics in our last song, which is always *Peterbilt's A-Comin'*. Mitch sets up the devices and wires them to a floor pedal that is set next to Andy, our drummer. Then, when we get to the right spot in the song, Andy pushes the pedal to ignite the devices. This time, when he did that, the devices went off and the ceiling caught fire.

Q. What happened when the fire started?

A. We have fire extinguishers on the side of the stage and stage hands who stand there in case something goes wrong. But the fire caught so fast and just started racing across the ceiling. There was no time to even get the extinguishers.

Q. How did you get out?

A. I just ran for the back. There was a door behind the stage, and I just ran for it.

Q. Could you see what was happening in the club?

A. There was no time. The fire was moving so fast that I just ran. I have never seen fire move like that before.

Q. I understand that not all of the band members got out of the club. Is that right?

A. Everyone got out but Andy, our drummer. I don't know why he did not make it out.

Q. Do you have any knowledge of how the flash pots were set?

A. Yes. The devices that Mitch purchased were rated for indoor use. They had adjustments to allow for different ceiling heights, and Mitch set them so that the flames would go about ten feet into the air.

Q. How do you know what settings Mitch used?

A. I was standing next to Mitch when he set them and I saw the setting he was using. He has used that setting before, and I know that it means that the flames will be no more than ten feet high. Since we are the people on stage when the devices are ignited, we have to know these things for safety reasons.

Q. Can you explain how the settings are done?

A. I don't know exactly how they work. I just know that there is a small dial that adjusts the height of the flame to account for different ceiling heights indoors. Once that is set, there is a special cap that goes on the flash pots that prevents anyone from opening it without a special tool.

Q. Did you have any conversations with Chris Jensen after the fire?

A. Yes. He called and wanted to know why we had used pyrotechnics during the show.

Q. What did you tell him?

A. I directed him to the contract and the questionnaire where we said we were going to use them.

Q. How did Mr. Jensen respond?

A. He said he had talked to Mitch Murphy and told him that we could not use the devices because of the foam. I told him that that was bull because any calls like that would have been directed to me.

Q. Do you know why the fire happened?

A. I know that the pyrotechnic devices caught the soundproofing material on fire.

Q. Who set up the pyrotechnic devices?

A. Mitch did.

Q. Since Mitch is an employee of Armadillo Enterprises, doesn't that make the band responsible for the fire?

A. No. The devices we used were rated for indoor use. The contract said that we would be using pyrotechnics. If there was a problem, Chris Jensen should have told me about it and we would never have used the devices. There would not have been a fire except for the foam that we were not told about.

Q. Why do you think Mr. Jensen did not tell you about this?

A. I had heard from friends who live in Armadillo that Sassy's had been in some financial trouble in the past few years. I think he wanted to have a really big show to promote his club, and he did not want us to cut back on the pyrotechnics.

Q. Mr. Rockford, have you ever been convicted of a crime that could be punished by more than one year in prison?

A. Yes, I have two convictions for possession of marijuana, but those were 7-8 years ago. I have been clean since.

Q. Have you ever been convicted of a crime involving dishonesty?

A. Well, I don't know about dishonesty, exactly. I have a conviction for shoplifting from 9 years ago. It was all a big misunderstanding, but I got convicted anyway.


Q. Anything else?

A. No.



Rupert Rockford

Sworn to and subscribed before me this
17th day of November, 2005.



Notary Public

DEPOSITION OF CHRIS JENSEN

Q. Please state your name.

A. Chris Jensen.

Q. What is your address?

A. I live at 17883 Aggie Lane in Armadillo.

Q. Are you employed?

A. I am the owner and manager of Sassy's.

Q. What is Sassy's?

A. Sassy's is a bar and dance club with food service. At least one night a week we have live entertainment. The other nights we have recorded music. We used to have karaoke one night a week, but we have stopped that.

Q. What type of live entertainment do you have?

A. We usually have local bands. Sometimes we will have bands that are just starting out that are touring locally. That's about it.

Q. How did you come to have The Dead Armadillos playing at Sassy's?

A. Clearly The Dead Armadillos are a much larger act than we would usually ever have. But all of the band members grew up in Armadillo, and their first shows were at Sassy's. When they were putting together their tour this year, they were going to do a show in Armadillo. When Rock called me, he said they wanted to "get back to their roots" and do a small show at Sassy's.

Q. What was your reaction to that?

A. I was excited about it. I knew it would be great publicity for Sassy's, and I thought it would be fun to have them back. Plus the club could really use the money the show would bring in.

- Q. Did you have any concerns about them playing at Sassy's?
- A. Naturally. They are used to playing huge arenas now, and we can only have 175 people. But Rock assured me that it would be a "toned down" version of their show - just like in the old days.
- Q. What did you do after Rock called?
- A. I faxed our band questionnaire to Rock.
- Q. Did you get that questionnaire back?
- A. Yes.
- Q. I'm showing you what has been marked as Exhibit C for identification. Do you recognize this?
- A. This is the questionnaire that I got back from Rock.
- Q. When you got this, did you have any concerns?
- A. Yes. Rock had said that they were going to use pyrotechnic devices.
- Q. Why was that a problem?
- A. In 2004, we installed foam insulating board on the ceiling of the club in response to complaints about the acoustic quality in the club and also noise complaints from some of the neighbors. Because of this, we no longer allow the use of pyrotechnic devices in the club.
- Q. What is this foam insulating board?
- A. It is a product that comes in 4' x 8' sheets. Sassy's was not originally built with acoustics in mind. We tried the foam last year to see whether it helped make the bands sound better. It seemed to help, so we have kept it.

- Q. Are there any problems with it?
- A. I wouldn't say there are problems. It is a highly flammable material, so we have had to stop allowing pyrotechnic devices.
- Q. If that is the case, why is the question still on the form?
- A. Most of the bands that we contract with are too small to be able to afford any type of pyrotechnic effects, so it is rarely an issue. Plus, I have just been too busy with other things to change the form.
- Q. Fire Marshal Walford said that pyrotechnics were not forbidden in Sassy's as far as the fire marshal was concerned. Why have you forbidden them?
- A. The insurance company for Sassy's wanted to charge more money if we were going to have anyone use pyrotechnics. I could not afford the additional insurance, so I just stopped allowing them.
- Q. After you got the form back from Rock, did you ever talk to him about the pyrotechnics?
- A. Yes. I called Rock right away and told him that they could not use pyrotechnics.
- Q. What was his response?
- A. He sounded very disappointed. He said that they always used pyrotechnics in their shows and that he thought that his pyrotechnician, Mitch Murphy, could find something that was safe to use. He also mentioned that they had used them the last time that they played at Sassy's, which was several years ago.
- Q. What did you tell him then?
- A. I just said again that they could not use them for this show.
- Q. Did you tell Rock at that time about the foam insulation?

- A. No. I thought if I told him they were forbidden, he would simply comply with the club rules. I really did not think I had to explain myself.
- Q. Have The Dead Armadillos played at Sassy's since the foam was installed?
- A. No.
- Q. Have any of the band members or road crew been inside Sassy's since the foam was installed?
- A. Not to my knowledge.
- Q. I'm showing you what has been marked as Exhibit B for identification. Do you recognize this?
- A. Yes, this is our contract with Armadillo Enterprises for the Dead Armadillos' show.
- Q. Is this your signature at the bottom?
- A. Yes, it is.
- Q. Is this a true and correct copy of the contract that you had with The Dead Armadillos for their performance at Sassy's.
- A. Yes, it is.
- Q. Does this contract incorporate the questionnaire?
- A. Yes.
- Q. Whose handwriting is this on the questionnaire?
- A. Mine.
- Q. After your discussion with Rock that pyrotechnics were forbidden, did you ever ask him to sign a new contract?

- A. No.
- Q. Did there ever come a time when you had any other discussion with The Dead Armadillos about using pyrotechnics?
- A. Yes. Mitch called me about three weeks before the show and said that he had found some flash pots that were rated for indoor use and that they wanted to use them in the show. He thought that the indoor rating might change my mind on whether they could use them.
- Q. What did you tell him at that time?
- A. I just said again that they could not use them.
- Q. What was his response?
- A. He said again how they always used them in their shows - that it was like a signature for them. He really wanted to use them, but I told him again that they could not use anything like that in the club.
- Q. Did he ever say that the band would not use them?
- A. He told me that if that was the final word, they would not use them.
- Q. Did you ever apply for a permit from the Dallas County Fire Marshal to use these devices?
- A. No, since I had no idea that they were going to be used.
- Q. Mr. Jensen, I'm showing you what has been marked as Exhibit D for identification. Do you recognize this?
- A. Yes, this is the flyer that I used to promote The Dead Armadillos show.
- Q. Is this a true and correct copy of that flyer?
- A. Yes.

- Q. Who created this flyer?
- A. The Dead Armadillos provided it to me.
- Q. Did you approve this flyer before it was distributed?
- A. Yes.
- Q. Did you have any question as to why the band would have included the flaming face on this flyer if no pyrotechnics were to be used?
- A. Yes, and I called and spoke with Rock about it. He said that they used this picture on all of their flyers - it was like a mascot - and that it did not mean anything.
- Q. Turning to the day of the show, when did you first go to Sassy's that day?
- A. I was there early in the morning doing paperwork. I left before lunch, and I came back around 7 p.m.
- Q. Had the band been in Sassy's during that time?
- A. Yes. I had arranged for the band's crew to be able to get inside early that morning to start setting up. Some of them were there in the morning while I was there. I left before they were finished.
- Q. Did you watch what they were doing?
- A. Not really.
- Q. Do you know Mitch Murphy?
- A. Yes, I have known Mitch since high school?
- Q. Do you know what he does for the band?

- A. I had heard that he had become trained and licensed to do their pyrotechnic work.
- Q. Did you see him at Sassy's when the road crew was there?
- A. Yes.
- Q. Did you wonder what he was doing there?
- A. No. I don't know what work he does for the band other than the pyrotechnics. For all I know, he does lots of other road crew work for them.
- Q. Did you question what he was doing?
- A. No. Maybe I should have, but I didn't.
- Q. What happened next?
- A. I got back to the club around 7 p.m. The stage was set up. We were going to open the doors at 7:30 although the show would not start until 9 p.m.
- Q. Did you ever inspect the stage?
- A. No.
- Q. Did you speak with any of your employees about any of the set-up that had occurred?
- A. No.
- Q. Did any of your employees ever call you or tell you that there were pyrotechnic devices set up on the stage?
- A. No.
- Q. Did you ever see any pyrotechnic devices on the stage?

- A. No.
- Q. What happened next?
- A. The show went on. It went great until the last song. Then flames shot out of the stage and the ceiling caught fire.
- Q. What was your reaction when you saw that?
- A. Panic. Rage. Disbelief.
- Q. What did you do?
- A. When the flames shot up, I was beyond angry. My first thought was that Rock had lied to me. Almost immediately, though, I saw the ceiling on fire and I panicked. I then started trying to get people out.
- Q. Was there any problem with people getting out?
- A. Yes. During the show, customers had pushed tables and chairs up against the walls to try to get more room to dance. We had tried to keep the exits clear, but I noticed that the side entrance was blocked.
- Q. What had you done to keep the exits clear?
- A. When we saw the patrons moving furniture, I had two of my employees go move it away from the exit. I asked them to keep an eye on it to make sure that it did not get pushed back across the exit.
- Q. Did you follow up to make sure that the exits were clear?
- A. No. I was busy with other things.
- Q. How many people were in Sassy's that night?
- A. We sold 150 tickets.

Q. Do you know how you ended up with over 200 people inside?

A. No.

Q. After the fire, did you have any conversations with any of your employees about Dusty Stockard?

A. Yes.

Q. Who is Dusty Stockard?

A. He had been my assistant manager for over 10 years.

Q. Did something happen with Mr. Stockard in the weeks before The Dead Armadillos' show?

A. Yes, I had been forced to fire Dusty.

Q. Why did you fire him?

A. He and I had been on the outs for a while. I had alcohol disappearing, but only on the shifts that Dusty was in charge of. I had accused him of drinking my profits. He swore that he was not doing that, and said that one of the bartenders - a girl named Lisa - was giving free drinks to men she thought were cute. I told him that if his shifts were off any more alcohol, he was fired.

Q. When did that conversation take place?

A. Around Thanksgiving 2004.

Q. How were relations between you and Dusty after that conversation?

A. I would say strained was a nice way of putting it.

Q. What happened next?

- A. In late January 2005, I discovered during a routine end-of-the-year audit that I was losing both alcohol and cash on Dusty's shifts, and some of those shifts were ones where Lisa was not working. I had pretty much had it at that point. So I fired him.
- Q. What was Mr. Stockard's reaction?
- A. He told me I was wrong and that he could not believe that I would suspect him of this. He became very irate and told me that he would see to it that I burned in hell for this.
- Q. Were those his exact words?
- A. Yes.
- Q. Did you ever see or hear from Mr. Stockard again?
- A. Yes, I received an e-mail that I believe to be from him.
- Q. I'm showing you what has been marked as Exhibit E for identification. Do you recognize that?
- A. Yes, I do.
- Q. What is this?
- A. This is a print-out of an e-mail that I received on my e-mail account at Sassy's.
- Q. Does this print-out accurately reflect the e-mail that you received?
- A. Yes, it does.
- Q. Do you recognize the sender's e-mail address, "stockyard2000@aol.com"?
- A. I believe that is Dusty's e-mail address, but I cannot say for sure as I have never corresponded with him by e-mail.

Q. Have you seen or heard from Mr. Stockard since the fire?

A. Not other than this e-mail.

Q. Have you ever learned anything about Mr. Stockard's whereabouts on the day of The Dead Armadillos' show.

A. Yes, one of my employees called me and left a message that Dusty was inside the club while the road crew was setting up for the show. He had apparently left before I could get back to the club.

Q. Did you ask anyone about this when you got to the club?


A. No. I could not find anyone who had seen him other than Chenille.

Q. Mr. Jensen, your club has been sued in this action. Do you believe you are at fault?

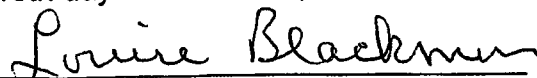
A. No. I believe that Rock decided that he was going to use pyrotechnics no matter what I said and regardless of whether I was going to allow it.

Q. Do you think Mr. Stockard had anything to do with this?

A. It's certainly possible. I understand that there is some discrepancy between what Mitch set the devices for and the actual height of the flames, and Dusty had been interested in pyrotechnics for years. But whether he could really do this, I don't know.


Chris Jensen

Sworn to and subscribed before me this
10th day of November, 2005.


Notary Public

DEPOSITION OF CHENILLE LANE

Q. Please state your name for the record.

A. My name is Chenille Lane.

Q. What is your home address?

A. 8212 Petersen Lane, Armadillo, State of Lone Star.

Q. How are you employed?

A. I'm currently a bartender at Sassy's.

Q. Is that the job you had on February 14, 2005?

A. No, in February 2005 I was a waitress.

Q. Is the bartending position a promotion?

A. Yes.

Q. When were you promoted to bartender?

A. Late February of 2005.

Q. What do you remember about February 14, 2005?

A. I was scheduled to start work at 1 p.m. I was supposed to be working in the kitchen area dealing with dishes and glasses and silverware. Once that was done, I was supposed to make sure the tables had the right set-ups. I was also supposed to get the band and its crew any food or drinks that they asked for.

Q. What time did the band arrive?

A. I don't remember exactly. Some of the crew was there when I got there. They were setting up lights and some of the instruments and the sound equipment. One of the crew members was setting up Andy's drums. There were some other people connecting the amps and checking the lights.

- Q. You mentioned Andy's drums. Do you know anyone from the band?
- A. Yes. I dated Andy Little when we were in high school. Whenever he is in town, he usually calls and we catch up on what is going on.
- Q. Did anyone from the band ever arrive?
- A. Yes. They had already done several shows on this tour, so they did more of a sound check than a rehearsal. They checked the lights. They talked through what songs they were going to do.
- Q. How long did it last?
- A. Around an hour.
- Q. What happened when they were finished?
- A. Most of the band and the crew left, but Andy stayed behind. Andy is very particular about his drums, and he was still sitting there. It appeared that he was checking everything again.
- Q. Did you see anything else?
- A. About 20 minutes after the rest of the band left, I saw Dusty Stockard come into Sassy's and go up to Andy.
- Q. Did this surprise you?
- A. Yes, because Chris Jensen - the owner - had fired Dusty two days earlier. I knew he was not supposed to be there.
- Q. What had Dusty Stockard done at Sassy's before he was fired?
- A. Dusty was the assistant manager. He had been there for years.
- Q. So you know Dusty Stockard?
- A. I know Dusty way better than I should. He was a year ahead of me in high school. He started working at Sassy's when he graduated and he worked his way up to assistant manager. A couple of years ago, he and I lived together, but then he dumped me for some bimbo.

- Q. When you were living together, did Dusty have any interest in pyrotechnics?
- A. Yes. He had known Mitch Murphy from high school, and he always mentioned how he wished he could get into pyrotechnics like Mitch had. Dusty had been on the Internet looking for places where he could get training. He also read a lot on various sites about the different kinds of stuff that was for sale. But he was never willing to do what it took to try to get the training. That was Dusty – all talk and no action.
- Q. What did Dusty do when he went up to Andy?
- A. They were talking to each other. I couldn't hear what they were saying at first, but I could see they were talking.
- Q. What did you see?
- A. Well, as they talked, Andy started to get angry.
- Q. Did you see or hear anything else?
- A. I saw Dusty pointing to these little pots on the edge of the stage and then pointing at the ceiling. Andy looked up at the ceiling as well. Then there was a break in the music and I heard Dusty say something about everyone going down in flames.
- Q. What happened next?
- A. Andy said "No way. Mitch would know." Then he stormed off the stage and headed out the door.
- Q. You mentioned a break in the music. Was this when the band was still rehearsing?
- A. No, there is background music piped throughout the club. Mostly 80s dance music. It was a break in that music that I was talking about.
- Q. Did you ever learn what they were talking about?
- A. No.
- Q. What did Dusty do after Andy left?

A. I'm not sure. I went into the kitchen to call Chris Jensen and let him know that Dusty was there. I knew Chris would not want him to be there after he had been fired. I had to leave a message for Chris, and then I got busy with stuff in the kitchen. When I went back into the bar about an hour later, Dusty was gone.

Q. What happened next?

A. Nothing really happened until the show that night.

Q. What do you recall about the show?

A. It was a great show. People were dancing and having a great time. We even pushed tables and chairs aside to let more people dance.

Q. Who pushed the tables and chairs aside?

A. From what I could tell, it was the customers.

Q. Did Mr. Jensen say anything about that?

A. Oh yeah. He got some of the guys to try to push them back into place, but the crowd wouldn't let them. They were outnumbered.

Q. What happened next?


A. During the last song of the set, the band set off these things that are like a shot of fire and then a spray of sparks. It came from four of the little pots across the front of the stage. When those went off, the fire started.

Q. What happened next?

A. I could not believe it. The fire just spread so fast. The ceiling caught fire and it just raced out into the open area. I started screaming for the guys to get out. Then someone grabbed my arm and pulled me toward the entrance. I don't really know how I got out.


Q. What happened next?

- A. I went around to the back of the building to see if the band got out. I was screaming and crying. When I got there, I saw everyone but Andy. I kept asking them where Andy was, but no one knew. Later, they found Andy backstage. He had died in the fire.
- Q. Ms. Lane, I'm showing you what has been marked as Exhibit E. Do you recognize this?
- A. No, I have never seen this before in my life.
- Q. Do you know anything about the e-mail address that this e-mail apparently came from?
- A. Yes, that is Dusty's e-mail address. Or at least it was.
- Q. What do you mean?
- A. That was his e-mail address when we were living together. I watched him set up the account. But I don't know if he is still using that address.
- Q. What do you think happened to cause the fire?
- A. I don't know. I did not think that Chris let bands use stuff with fire, but he really wanted The Dead Armadillos to play at Sassy's and he would have done anything they wanted to get the show there. But Dusty was in the club when he was not supposed to be, and he could have done lots of things when no one was looking. I wanted to keep an eye on him, but I had to do my job.
- Q. Who do you think is at fault for the fire?
- A. The band. They set up the little pots. They shot off the fire. They ought to be responsible - not Chris.



Chenille Lane

Sworn to and subscribed before me this
15th day of November, 2005.



Notary Public

JASSY'S INC

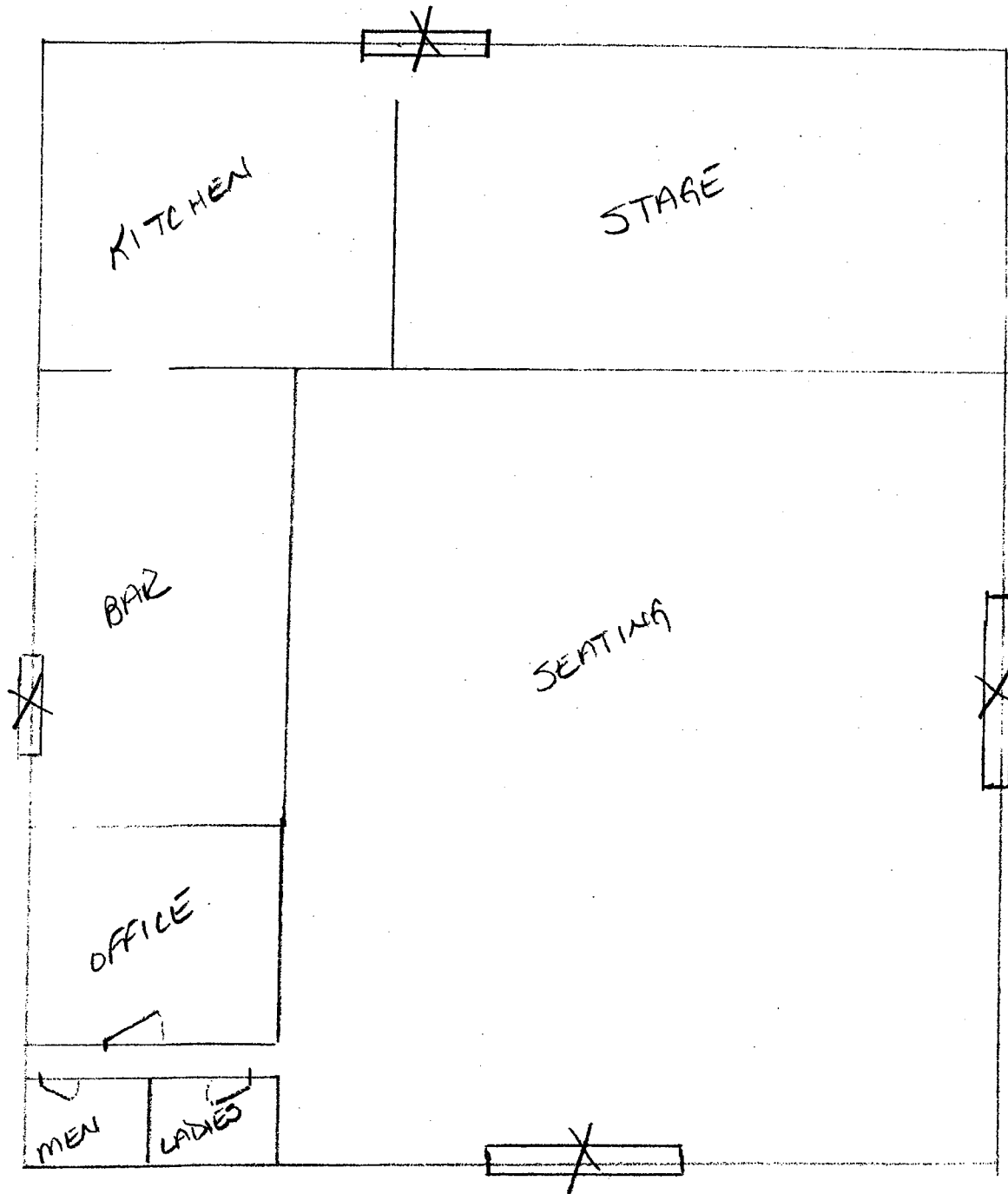


Exhibit A

PERFORMANCE CONTRACT

This Performance Contract is entered into this 30th day of November, 2004, between Sassy's, Inc. ("the Club"), and Armadillo Enterprises, Inc., d/b/a The Dead Armadillos ("the Band"). This Performance Contract is subject to the following:

1. The Band will perform a single performance on February 14, 2005, beginning at 9 p.m. and ending no later than 11:45 p.m. ("the Performance").

2. The Club will pay the Band \$5,000.00 for the Performance plus 25% of the profit from all food and beverages sales made between 8 p.m. and 11 p.m. on February 14, 2005. The Club will be entitled to all revenue from ticket sales and food and beverage sales over and above these amounts.

3. The Club will be responsible for obtaining all necessary permits and permissions for the Performance from the City of Armadillo and/or Dallas County, State of Lone Star.

4. The "Performance Questionnaire," signed by a representative of The Band on November 17, 2004, is attached to this Contract, and all of the terms, conditions, and representations made in the Performance Questionnaire are specifically incorporated herein.

5. The Band will provide all sound equipment, lighting equipment, and stages props for the Performance at its own expense. The Club will provide electrical connections for this equipment. The Club will make the premises available to representatives of Armadillo Enterprises, Inc., no later than 7 a.m. on February 14, 2005, for purposes of setting up sound, lighting, and stage equipment. The Band will remove all of its equipment from the Club by no later than 10 a.m. on February 15, 2005.

6. The Club will be responsible for advertising the Performance in the local community. The Band will provide information and graphics for advertising materials at the Club's request. The Band will include the date and location of the Performance on all materials generally advertising the Band's upcoming "Mack Truck Tour."

7. The Band understands that the Performance requires a significant financial outlay by the Club in anticipation of the Performance. In light of this understanding, the Band agrees that if it must cancel the Performance for any reason after January 1, 2005, the Band will reimburse the Club for any ticket sales that must be refunded.

8. The Club maintains insurance on the premises itself. The Band agrees that it will provide general liability insurance in amounts acceptable to the Club to cover its own negligence. The Band will also provide worker's compensation insurance for all of its employees as required by law.

9. This Performance Contract is intended to be a final expression of the parties' agreement and a complete and exclusive statement of the terms thereof. This Performance Contract supersedes all prior representations, understandings, or agreements of the parties. The parties agree that this Performance Contract is to be performed in the State of Lone Star and shall be governed by the laws of the State of Lone Star.

Chris Jenson
for Sassy's, Inc.

Payot Rockford
for Armadillo Enterprises, Inc.

Exhibit B

PERFORMANCE QUESTIONNAIRE

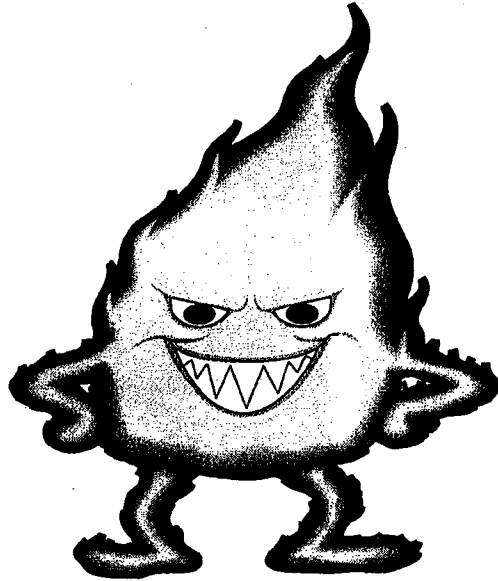
This Performance Questionnaire is made by and between Sassy's, Inc. ("the Club"), and Armadillo Enterprises ("the Band"), in anticipation of entering into a Performance Contract. The Club intends to rely on the information provided in this Performance Questionnaire in determining whether to enter into a Performance Contract with the Band.

1. What date(s) does the Band wish to perform? 2/14/05

2. How long is the Band's performance? approx 2 hours
3. Does the Band have its own lighting equipment? yes
If not, does the Band intend to rent lighting equipment? n/a
4. How much time is needed to set up lighting equipment? 6 hours
5. Does the Band have its own sound equipment? yes
If not, does the Band intend to rent sound equipment? n/a
6. How much time is needed to set up sound equipment? 6 hours plus band check
7. How much time is needed to remove lighting and sound equipment after the performance? approx 4-5 hours
8. Does the Band intend to use pyrotechnic devices of any kind, including fireworks, exploding devices, flame bars, or any other devices of any type that will be ignited during the show? yes no - talked to Mitch n/a
If so, has the Band used these types of devices in the past? yes
9. Does the Band have Commercial General Liability insurance coverage, and, if so, what are the policy limits? yes \$2,000,000
10. Does the Band have worker's compensation insurance in compliance with the laws of the State of Lone Star? yes
11. Does any member of the Band require any special accommodations, and, if so, what accommodations are needed? no
12. How many admission tickets does the Band need for its own use (for those persons other than Band members and working crew)? 13
13. Who is the primary contact person for the Band? Rupert Rockford
14. Who is the secondary contact person for the Band? Mitch Murphy
15. What is the contact number for the Band? 555-888-9909
16. Does the Band have any promotional materials that it desires to have the Club use in advertising? yes - will send
17. Does the Band have any sponsorship agreements that must be honored by the Club? no

DATED: Nov. 17, 2004
Rupert Rockford
for the Band

Exhibit C



THE DEAD ARMADILLOS
IN CONCERT

SASSY'S
FEBRUARY 14, 2005
9 P.M.
TICKETS ON SALE NOW

Exhibit D

From: stockyard2000@aol.com
To: Chris Jensen
Date: 2/15/05 9:27AM
Subject: Fire

Don't say I didn't warn you.

Exhibit E

PRELIMINARY JURY INSTRUCTIONS

You have now been sworn as the jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters will be explained to you later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. It is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered

by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration

by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in this case and give you a summary of the facts they expect the evidence will show.

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issues for your determination on the negligence claim of Tracey Wise against Sassy's, Inc., are whether Sassy's, Inc., was negligent in failing to maintain and operate its premises in a reasonably safe condition on February 14, 2005, and, if so, whether such negligence was a legal cause of the loss, injury, or damage suffered by Tracey Wise. In order for Sassy's, Inc., to be negligent, it must have known or reasonably should have known of the dangerous condition.

"Negligence" is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either of doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage so that it can reasonably be said that but for the negligence the loss, injury, or damage would not have occurred.

If the greater weight of the evidence does not support the claim of Tracey Wise, then your verdict should be for Sassy's, Inc. "Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in this case. However, if the greater weight of the evidence supports Tracey Wise's claim, then you should consider the defenses raised by Sassy's, Inc.

Sassy's, Inc., has raised a defense in this case which permits you, the jury, to determine whether persons or entities who are not parties to this lawsuit may have also contributed to the injuries of Tracey Wise. If you find that Armadillo Enterprises, Inc., d/b/a The Dead Armadillos was negligent in using pyrotechnic devices inside Sassy's and that this negligence caused or contributed to Tracey Wise's injury, you should determine what percentage of the total fault is chargeable to Armadillo Enterprises.

Sassy's, Inc., has also raised the defense of a "new and independent cause." In order to prevail on this defense, Sassy's, Inc., must prove by the preponderance of the evidence that a separate and independent entity or person did some act that was not reasonably foreseeable to Sassy's, Inc., and that was sufficient to break the causal

connection between Sassy's negligence and the fire. If you find that the acts of Dusty Stockard constituted a "new and independent cause" of the fire, then your verdict should be for Sassy's, Inc.

At this point in the trial, you, as jurors, are deciding only if Sassy's, Inc., was negligent and if Armadillo Enterprises, Inc., was negligent. You will first return a verdict on that issue. If you find that Sassy's, Inc., was at fault to any degree, at that time, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. Your verdict must be unanimous; that is, your verdict must be agreed to by each of you. You will be given a verdict form, which I shall now read and explain to you.

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR DALLAS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

TRACEY WISE,)

Plaintiff,)

Case No. 05-1700

v.)

SASSY'S, INC.,)

Defendant.)
_____)

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of Sassy's, Inc., which was a legal cause of damage to Tracey Wise?

YES _____

NO _____

If your answer to question 1 is NO, your verdict is for Sassy's, Inc., and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of Armadillo Enterprises, Inc., d/b/a The Dead Armadillos, which was a legal cause of damage to Tracey Wise?

YES _____ NO _____

If your answer to question 2 is NO, you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 2 is YES, please answer question 3.

3. Please state the percentage of fault, if any, which was the legal cause of Tracey Wise's injury that you charge to:

Sassy's, Inc. _____ %

Armadillo Enterprises, Inc. _____ %

The total of the two percentages must equal 100%.

SO SAY WE ALL this _____ day of _____, 2006.

Foreperson