

Flinders Aluminum vs. Mismo Insurance
Potential Dispute Concerning the Value of the Flinders Plant

Flinders alleges in its complaint as follows:

5) Flinders renewed the Mismo fire insurance policy each year following January 1, 2015. On or about October 1, 2024, the face value of the policy was increased to \$10 million. The Flinders plant was valued at \$10 million, a valuation to which Mismo agreed at the time the policy was increased."

Mismo Insurance does not specifically agree to the value of the Flinders plant. In its answer, it states as follows:

2) Paragraph 5 of plaintiff's complaint is admitted insofar as it alleges that the policy was renewed from year to year and that the face amount of the policy was increased to \$10 million on October 1, 2024.

Based on the caselaw cited below, in order to prove the value of the Flinders plant, Plaintiff would have to present some evidence of its fair market value. That evidence is not available in the case file. Therefore, for the purposes of trial, it will be stipulated that the fair market value of the Flinders plant is \$10 million.

Owner's Opinion on Property Value

It has long been the rule in Texas that the owner of a property can testify as to the property's value even if the homeowner cannot qualify as an expert witness. *Mata v. Mata*, 710 S.W.2d 745, 758 (Tex. App. - Corpus Christi 1986, no writ). The Texas Supreme Court in December 2012 limited that rule and held that the property owner must explain the basis for his or her opinion as to value. *Natural Gas Pipeline Co. of America v. Justiss*, 397 S.W.3d 150 (Tex. 2012) was a nuisance suit for damages, not a divorce. However, the rule articulated by the Texas Supreme Court should apply in divorce cases when a spouse testifies what the family house or a car or a business or the personal property is worth.

In such a situation, the spouse must also explain what that opinion is based on. The Texas Supreme Court in *Natural Gas Pipeline* stated: Because property owner testimony is the functional equivalent of expert testimony, it must be judged by the same standards. Thus, as with expert testimony, property valuations may not be based solely on a property owner's ipse dixit.* An owner may not simply echo the phrase "market value" and state a number to substantiate his diminished value claim; he must provide the factual basis on which his opinion rests. This burden is not onerous, particularly in light of the resources available today. Evidence of price paid, nearby sales, tax valuations, appraisals, online resources, and any other relevant factors may be offered to support the claim. But the valuation must be substantiated; a naked assertion of "market value" is not enough. Of course, the owner's testimony may be challenged on cross-examination or refuted with independent evidence. But even if unchallenged, the testimony must support a verdict, and conclusory or speculative statements do not. Headnote in *State v. Audie Gray Family L.P.*, 650 S.W.3d 727 (Tex. App. [14th Dist.] 3/31/2022: A two-pronged test governs the inquiry into whether a witness properly can testify under the property owner rule on behalf of an entity other than a natural person: first, property owner rule is limited to those witnesses who are officers of the entity in managerial positions with duties related to the property, or employees of the entity with substantially equivalent positions and duties; second, property owner rule falls within the ambit of rule of evidence governing lay testimony, and therefore does not relieve property owner of requirement that a witness must be personally familiar with the property and its fair market value, but property owner rule creates a presumption as to both. Tex.R.Evid.701