



## And The Defense Wins

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### Robert D. Allen



After a bench trial, U.S. Magistrate Judge Amos Mazzant of the Eastern District of Texas, Sherman Division, supported by a 25-page Memorandum Order, ruled in favor of Steadfast Insurance Company in a dispute over reasonable and necessary fees and expenses incurred by independent counsel representing Steadfast insureds. Dallas based DRI member [Robert D. Allen](#) of the **Law Offices of Robert D. Allen, PLLC** (with Meckler Bulger Tilson Marick & Pearson, LLP at the time of the trial) successfully represented Steadfast Insurance Company.

The case was initiated as a declaratory judgment action by Steadfast seeking a declaration that it was only required to pay independent counsel for reasonable and necessary attorneys' fees after being billed for over \$350,000 by independent counsel in the aftermath of Steadfast settling the plaintiffs and intervenors' case against its insureds. The insureds filed a counterclaim against Steadfast, seeking damages for common law and statutory bad faith and related theories. The independent counsel intervened to recover the contested fees.

The insureds, sellers of sophisticated life insurance products, were embroiled in numerous lawsuits alleging that the products in question violated section 419 of the Internal Revenue Code. Steadfast defended the insureds under a reservation of rights and allowed the insureds to be represented by counsel of their choosing. Meanwhile during the course of the litigation, the insureds filed cross-claims against several of the co-defendants, seeking millions of dollars on their own claims for affirmative relief. Two of the co-defendants sued by the insureds filed a cross-claim and a counterclaim against the insureds, to which Steadfast agreed to defend, after it settled the claims of the plaintiffs and intervenors.

The insureds/independent counsel took the position that even though the plaintiffs' and intervenors' case against the insureds was extinguished through the settlement, Steadfast should continue to fund the insureds attorneys' fees at a clip that at times exceeded \$100,000 a month. Steadfast claimed that the vast majority of the fees and expenses were unreasonable and unnecessary or otherwise attributable to the insureds' claims for affirmative relief.

On July 26, 2013, Magistrate Mazzant (to whom both parties consented) issued his Findings of Fact, Conclusions of Law and he entered an Order granting in part Steadfast's Motion for Judgment as a Matter of Law. He agreed with Steadfast's expert that the amount of reasonable and necessary fees and expenses attributable to defending the insured against the continuing cross-claim and counterclaim was

\$19,660 and not the \$353,125.31 sought by the insureds/independent counsel. The court also granted Steadfast's Motion for Judgment as a Matter of Law in connection with the insureds' claims for extra-contractual damages.

In so doing, the court commented: "[i]t was not necessary to spend the massive amounts of time expended by [the independent counsel] in defending the...Cross-Claim and the...Counterclaim." Additionally, the court ruled that since it "must exclude most of the requested fees and expenses as duplicative, excessive, redundant, inadequately documented, or otherwise unreasonable and unnecessary or related to their claims for affirmative relief, the court is left with the calculations of Steadfast's expert." *Steadfast Insurance Co. v. Archer D. Bonnema, et. al.*, Civil Action No.: 4:11cv146 on file in the United State District Court for the Eastern District of Texas Sherman Texas.

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