



## And The Defense Wins

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On March 3, 2011, on the second day of deliberations after a two and a half week jury trial in state district court in Dallas, the jury returned a unanimous verdict in favor of St. Paul Fire & Marine Insurance Co. DRI members [Robert D. Allen](#), [Abel A. Leal](#), and [Robert L. Berry](#) of **Meckler Bulger Tilson Marick & Pearson, LLP** in Dallas successfully represented St. Paul.

The win involved a dispute between St. Paul, as a reinsurer, and a Managing General Agency (MGA) over excessive commission withdrawals from a premium trust account by the MGA. The MGA denied making excessive withdrawals from the premium trust account and filed a \$6.5 million counterclaim against St. Paul, contending that St. Paul's wrongful termination of the Reinsurance Agreement had the effect of putting the MGA out of business and that the value of the business was \$6 million. The MGA also claimed that it was entitled to an additional \$500,000 in commissions from St. Paul. The jury ruled against the MGA on all of its theories of recovery and ruled in favor of St. Paul on its claims for breach of contract, promissory estoppel and fraud.

One significant aspect of the case was that when the parties negotiated terms for a renewal of the Reinsurance Agreement to become effective on January 1, 2001, a new term provided for St. Paul and Clark & Co. to begin sharing policy fees, which amounted to approximately \$1.2 million over the remainder of the Reinsurance Program. However, a contract addendum to that effect was never executed. The Reinsurance Agreement and Managing General Agency Agreement both contained provisions that required all modifications to be in writing and signed by all parties. Accordingly, Clark & Co. contended it did not take excessive withdrawals and that it was entitled to all of the policy fees (amounting to an additional \$500,000). St. Paul terminated the Reinsurance Agreement when it decided to stop writing reinsurance in December 2001, and Clark & Co. contended that St. Paul's manner in cancelling the reinsurance breached the Reinsurance Agreement and had the effect of putting Clark & Co. out of business.

St. Paul obtained jury findings that Clark & Co. breached the Reinsurance Agreement because the Agreement was modified, albeit not in writing and signed by all parties, but by the parties' performance and by Clark & Co. being estopped from requiring that the modification had to be in writing and signed by all parties. Also, the jury found for St. Paul on its promissory estoppel and fraud theories.

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