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## California Court of Appeal Rules in Favor of Property Insurer on Case Involving Reformation, Scope of Agent Authority, Doctrine of Non-Reversible Error

By Ronald J. Clark

On October 27, 2006, the California Court of Appeal issued its ruling in *Metawave Communications v. St. Paul Fire & Marine Ins. Co. and Woodruff-Sawyer* (Case No. A111085). The case arose out of a fire loss in Taipei, Taiwan which destroyed the insured's manufacturing operation located there. The insured presented a claim for property damage, business interruption and extra expenses. Ultimately, over \$3 million was paid by the property insurer, but a dispute arose over, among other things, whether the insurance policy should be "reformed" to reflect a different business interruption coverage form. A different form had been requested by the insured and its broker. The insured filed suit in San Francisco County Superior Court seeking \$18 million plus punitive damages for breach of contract, reformation of contract and "bad faith."

The trial court (Judge Paul Alvarado) trifurcated the trial. In the first and second phases tried to the court, the court ruled that (a) only the foreign policy – not the companion domestic policy – was triggered by this loss in Taiwan, and (b) the policy should not be reformed. In the third phase which was tried to a jury, the jury concluded that the insured had not cooperated with the insurer's efforts to investigate the claim, and that the insurer was prejudiced as a result. That finding led to a Judgment in the insurer's favor.

The Court of Appeal (First Appellate District, Division Two) affirmed the trial court Judgment. The court ruled that the two companion policies (foreign and domestic) unambiguously limited the Business Interruption/Extra Expense claim to the limits available under the foreign policy. Next, the court affirmed the trial court's decision not to reform the policy. That decision was based, in large part, on the trial court's determination that the agent/broker (Woodruff-Sawyer) did not have authority – either actual or ostensible – to bind the insurer to a non-standard coverage form which would have provided "modified" business interruption coverage. The court rejected the insured's argument that California law recognized a third form of agency authority based solely on the insurance statutes.

Lastly, the court discussed the issue of reversible or non-reversible error. In this instance, where the trial jury had determined that the insured breached a policy condition by failing to cooperate with the investigation – to the prejudice of the insurer – whether the court had erred on the reformation or agency issues was moot because the insured would not be entitled to coverage anyway. Thus, although the Court of Appeal found no error, any error would have been non-reversible. St. Paul was represented at trial and on appeal by Ronald J. Clark and Kevin (Casey) Christensen of Bullivant Houser Bailey PC.