

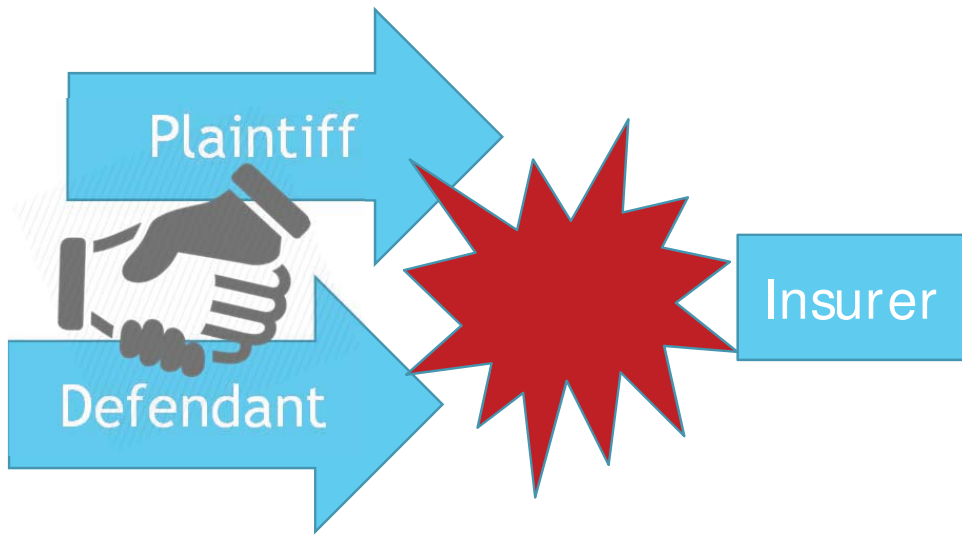
# Ethical Issues When Insurers Won't Fund the Defense

27<sup>th</sup> Annual Admiralty and Maritime Law Conference

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Texas Supreme Court Statements

Party collusion

**Inflated Judgments**

Inimical to the adversary system

SHAM

Makes litigation inevitable

Is an untruth

**Perpetrates a fraud**

Positions contrary to natural interests

## Party Statements

- ▶ Plaintiff **schemed** to obtain an excess judgment.
- ▶ Plaintiff **maneuvered** the case.
- ▶ Plaintiff **manufactured** a \$105 million judgment.
- ▶ Plaintiff obtained an **astronomical** judgment.
- ▶ The insurer accuses the parties of **secrecy** and **collusion**.
- ▶ The proceedings were **rife with collusion**.
- ▶ The insurer must be given an opportunity to present that **misconduct** to a jury.

## Texas Supreme Court Answers

- ▶ *Elbaor v. Smith*, 845 S.W.2d 240 (Tex. 1992)
  - ▶ no Mary Carter Agreements
- ▶ *State Farm Fire & Cas. Co. v. Gandy*, 925 S.W.2d 696 (Tex. 1996)
  - ▶ limited assignment of insurance claims
- ▶ *Great Am. Ins. Co. v. Hamel*, 525 S.W.3d 655 (Tex. 2017)
  - ▶ requires a fully adversarial trial to create a binding judgment even when the insurer denies a defense

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