

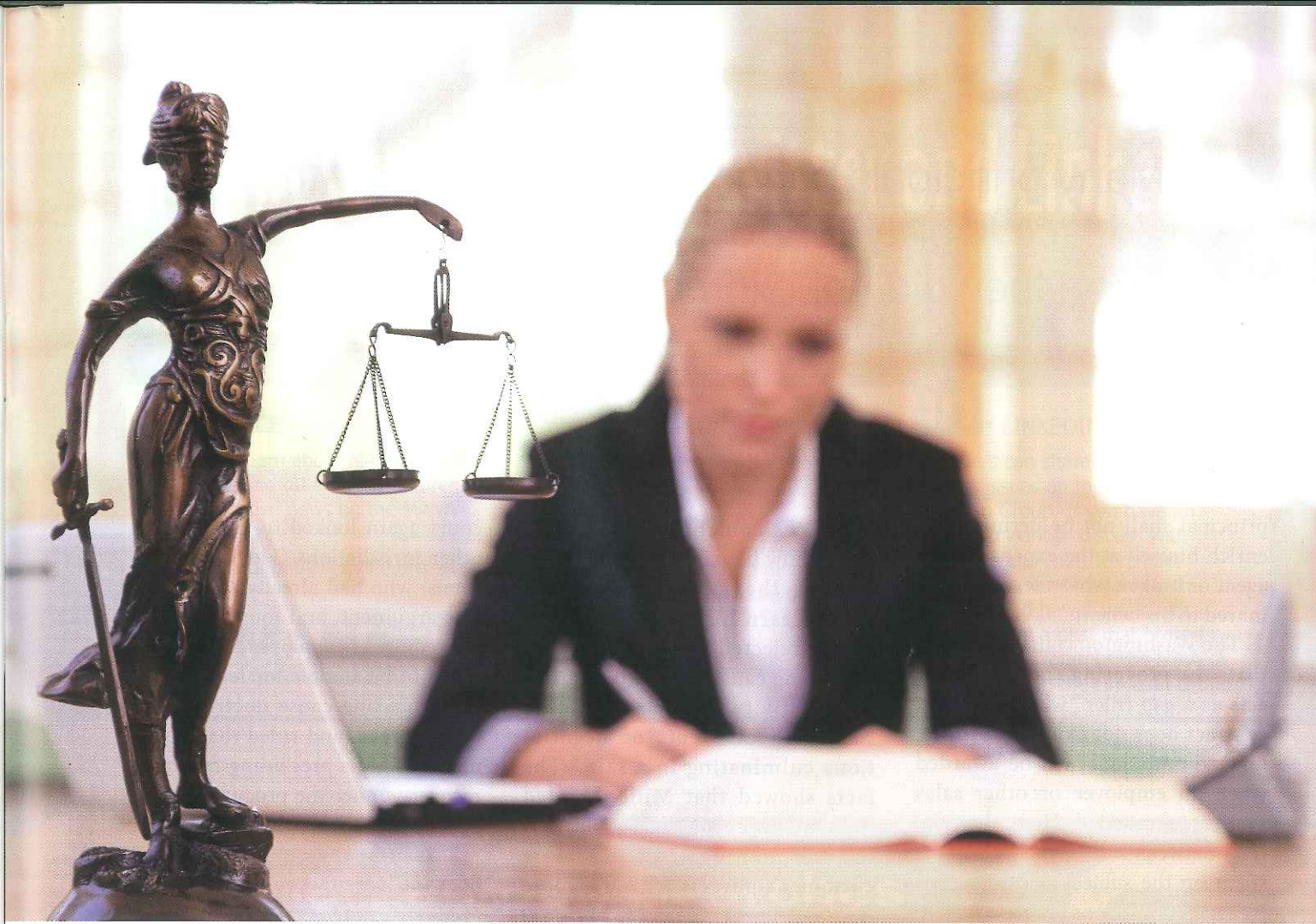
# The Procuring Cause Doctrine Enables Even Employees to Recover Post-Termination Commissions

BY ADAM J. GLAZER

This column ordinarily features legal issues confronting independent sales representatives who promote manufacturers' products, not company reps involved in marketing the services of their employers. However, when Keith Miller maintained he was mistreated by his principal, who also happened to be his employer, it happened in a manner so brazen that all independent reps will not only feel his pain, but will respect and cheer his concerted efforts to get paid.

Employed for several years as a field sales representative for Paul M. Wolff Co., a subcontractor specializing in concrete finishing services known as PMW, Miller was responsible for facilitating and overseeing projects within his territory. When a project is awarded to PMW, the rep completes the final step toward earning a commission by managing the company's performance through completion of the project. And PMW historically paid a healthy 15 percent commission on much of the business.

When Miller resigned in 2009 to operate his own concrete company, he offered to complete his unfinished PMW projects. PMW refused the offer, and assigned other employees to finish these projects. Miller then sought commissions on at least 14 pending projects. Significantly, Mill-



© Ginasanders | Dreamstime.com

## When Miller resigned in 2009 to operate his own concrete company, he offered to complete his unfinished PMW projects.

er's contract with PMW said nothing about the payment of post-termination commissions.

After PMW rejected his commission claim, Miller brought suit in Washington state court invoking the "procuring cause doctrine." PMW argued that Miller's failure to oversee the completion of the projects precluded his recovery, and threw in that it had paid commissions to the rep hired to replace Miller. The trial court ruled for Miller, finding PMW

owed him commissions on the projects that were completed after his termination, but that he procured for PMW pre-termination, regardless of other arrangements it made with a new rep. PMW appealed.

As the Washington appellate court found in a decision handed down earlier this year, the procuring cause doctrine entitles a party employed to procure a purchaser to whom a sale is eventually made to receive a commission if he "sets in motion the se-

ries of events culminating in a sale." The end of the relationship does not enable the employer to "terminate an agent's right to compensation if he or she caused the sale."

Dipping into the history books, the court partially supported its holding by citing to decisions from 1924 by the Louisiana Supreme Court and 1954 by the Wisconsin Supreme Court, each recognizing that the procuring cause doctrine is based "upon the equitable maxim that the

## Many principals cannot comprehend how they could face liability for post-termination commissions when they did not expressly agree to pay such commissions in their contracts.

principal shall not be permitted to enrich himself at the expense of the agent or broker, whose services have inured to his benefit.”

The Washington court also noted that “the procuring cause doctrine acts as a gap filler” when a written contract does not expressly provide how commissions will be awarded when an employee or other sales agent is terminated. Here, the contract between Miller and PMW was silent on the subject of post-termination commissions, and as a result, the procuring cause doctrine was fully applicable.

The court’s recognition that the procuring cause doctrine applies as a “default” rule, that is unless specifically limited or precluded by the parties’ contract, is highly significant. Many principals cannot comprehend how they could face liability for post-termination commissions when they did not expressly agree to pay such commissions in their contracts. Yet, this is the great equalizing function of the doctrine. It entitles a sales rep, independent or otherwise, who procures the sales pre-termination to share in the sales proceeds post-termination, unless the rep and principal expressly agree otherwise.

PMW’s contention that Miller must show he participated in each step of the customer relationship to earn his commission was firmly rejected by the court. The procuring cause standard requires only “activity that sets in motion the chain of events or negotiations culminating in a sale.” The facts showed that Miller located the subject projects, submitted the bids and secured the binding customer contracts. This was more than sufficient to earn a commission. As the court concluded, the procuring cause rule simply does not require the rep to participate in the sale’s culmination to get paid.

As a last ditch argument, PMW suggested the procuring cause rule applies only when the rep gets terminated by a principal, not when the rep resigns. The Washington

court again looked to courts from other jurisdictions (Florida and Illinois) who had already confronted this argument, and found they did not require an employee to be terminated to be eligible for relief under the procuring cause doctrine. The court agreed, and ruled that “resignation is not a precluding factor for recovery under the procuring cause doctrine in Washington.”

Procuring cause remains a viable doctrine in many courts to help reps of all stripes receive fair compensation for their successful efforts. Absent an explicit agreement restricting post-termination commissions, the doctrine ensures that unscrupulous principals cannot receive an unfair windfall by terminating the sales rep, and pocketing the commissions on future business procured by the rep pre-termination.



**Adam J. Glazer**, a partner in the Chicago law firm Schoenberg Finkel Newman & Rosenberg, LLC, protects the interests of manufacturers’ representatives nationwide. He is a MANA-recommended attorney who participates in Expert Access, the program that offers telephone consultations to MANA members. He may be reached at (312) 648-2300 or [Adam.Glazer@sfnr.com](mailto:Adam.Glazer@sfnr.com).

Legally Speaking is a regular department in *Agency Sales* magazine. This column features articles from a variety of legal professionals and is intended to showcase their individual opinions only. The contents of this column should not be construed as personal legal advice; the opinions expressed herein are not the opinions of MANA, its management, or its directors.