

The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[Blue Water Sunset, LLC v. Markowitz: In a Derivative Action, Attorney Was Disqualified From Representing Parties Who Were Nominally on the Same Side But Had Conflicting Interests](#)

February 3rd, 2011 by [Mark Hancock](#)

On February 3, 2011, the California Court of Appeal for the Second Appellate District issued a [published decision](#) in *Blue Water Sunset, LLC v. Markowitz* holding as follows:

If an attorney simultaneously represents a limited liability company and a member with conflicting interests in a derivative action filed by the second and only other member, and if the limited liability company's consent to concurrent representation is required by California Rules of Professional Conduct, rule 3-310, the second member has vicarious standing to move to disqualify [the attorney from representing the limited liability company].

The Court of Appeal ruled that in this circumstance it did not matter that the limited liability companies involved were nominal defendants; the companies had an expectation that the attorney would do nothing to help the member he concurrently represented. However, the attorney represented the companies and the member in connection with a demurrer, even though the parties' respective interests were adverse. Accordingly, the rule of automatic disqualification applied and the attorney was prohibited from representing the companies. However, the attorney was allowed to continue representing the member, and was not completely disqualified from the case.