

# The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## **Agency Allegation in Malpractice Complaint Results in Right to Arbitrate by Non-Signatory to Arbitration Agreement**

June 23rd, 2011 by [Mark Hancock](#)

A former client brought a complaint for legal malpractice against several attorneys. Some were signatories to an arbitration agreement with the client, but one was not. In response to a petition to compel arbitration brought by those attorneys who had signed the arbitration agreement, the court found that claims against those attorneys were inextricably intertwined with the claims against the one non-signatory, who was not entitled to arbitration. For this reason, the trial court ruled that the petitioning attorneys were not entitled to arbitration. This was apparently out of concern that inconsistent rulings could result if similar claims were pursued against the attorneys in different fora.

On appeal in an [unpublished decision](#), the California Court of Appeal ruled that the petitioning attorneys were entitled to arbitration because the plaintiff had alleged in her complaint that all of the attorney defendants were agents of one another, and the non-signatory attorney was willing to join the other attorneys in arbitration. The court stated:

Here, because plaintiff's allegation of agency is a binding admission, she cannot seek to avoid arbitration based upon the lack of a signed agreement with Gordon containing an arbitration provision. And since Gordon is willing to arbitrate the matter as long as all defendants participate, there is no danger of the inconsistent rulings that the trial court feared.

The decision is *Marie v. Stanton*, Second Appellate District, Division Four, 2011 Cal.App.Unpub LEXIS 4581.