



# California Corporate & Securities Law

## Privilege and Work-Product

July 6, 2011

Imagine that one attorney, let's call her Ms. Bennett, has a client, Ms. Austen. Ms. Bennett, of course, speaks with Ms. Austen. Suppose, however, that Ms. Bennett also speaks with another attorney in her firm, Mr. Darcy, about Ms. Austen's case. Is the attorney-client privilege limited to just the communications between Ms. Bennett and Ms. Austen or is it sufficiently broad to cover communications related to a client's matter or interests among and between multiple counsel? Last week, the Second District Court of Appeal answered this question in [Fireman's Fund Ins. Co. v. Superior Court](#), holding that the attorney-client privilege is not limited to communications directly between a client and his or her attorney.

The Court of Appeal also held that the "absolute work product privilege [sic] depends not on the existence of a writing but rather on the nature of the claimed privileged matter."

The reference to "absolute work product" is to the matters protected under subdivision (a) of Section 2018.030 of the California Code of Civil Procedure. That subdivision provides that "A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable *under any circumstances*." Subdivision (b) provides that all work product, other than that described in subdivision (a) is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice. Hence the protection in subdivision (a) is considered absolute while that provided by subdivision (b) is deemed qualified.

While the Court's holding comports with common sense, it does not comport with the statute's express reference to "a writing". Thus, the Court had to resort to legislative history to conclude that the legislature did not intend to limit the protection of the absolute work product doctrine to just opinions reduced to writing.

Please contact **[Keith Paul Bishop](#)** at Allen Matkins for more information [kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)

<http://www.calcorporatelaw.com/>