



Alerts

California Court Disqualifies Law Firm in Woolsey Fire Cases

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Douglas W. Richardson, et al. v. Southern California Edison Co., et al., Case No. JCCP 5000/19STCV10357 (Superior Ct. L.A. County May 31, 2019)

Brief Summary

Upon motion by the defendant, Southern California Edison ("defendant"), law firm Quinn Emmanuel Urquhart & Sullivan LLP (the "Firm"), was disqualified from representing victims (plaintiffs) of a deadly fire in California last fall (the "Woolsey Fire"). While defendant had not been represented by the Firm with respect to the fires, it had consulted with the Firm on related issues almost a year before the Woolsey Fire. The court concluded that under the "*substantial relationship test*," the issues that would have reasonably been discussed and the material confidential information provided during that consultation were "substantially related" to the Firm's current representation of victims of the Woolsey Fire. Consequently, disqualification was required. The Firm has filed a notice of appeal.

Complete Summary

Underlying Action

The Woolsey Fire was a devastating wildfire that burned in Los Angeles and Ventura Counties in California, starting on November 8, 2018. The Firm was representing victims of the fire against defendant; the case was one of at least eight lawsuits arising from the fire that had been coordinated before the court. Defendant sought to disqualify the Firm from representing plaintiffs, arguing the Firm had previously represented or advised three major California investor-owned utilities, including defendant, Pacific Gas & Electric Co. ("PG&E") and San Diego Gas & Electric ("SDG&E"). Defendant contended that the Firm counseled the companies for years on defense arguments, and advised defendant in a December 2017 meeting on the "inverse condemnation theory of liability," a California state policy that holds utilities strictly responsible for fires caused by their equipment, regardless of negligence. While the Firm responded that it should not be disqualified because it never actually represented defendant, defendant argued the Firm abruptly switched sides by representing the fire victims after advising it and the other utilities on wildfire defense tactics.

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Disqualification "Tests"

The court identified two tests to determine if disqualification was required: the "substantial relationship test" and the "balancing test." Under the "substantial relationship test," disqualification is required if the attorney's current representation involves the same matter for which they had previously represented a former client, or, even if not the same matter, if a "substantial relationship" exists between the former representation and the current representation. Pursuant to the "balancing test," the court must weigh the effects of the party's right to counsel of choice, the financial burden on the client of replacing disqualified counsel and any tactical abuse of the disqualification proceeding.

In first analyzing the disqualification under the "substantial relationship test," the court agreed that the "substantial relationship test" required both factual and legal overlap. It then concluded that defendant had made that showing. The court determined that defendant made a persuasive showing that "material confidential information" was provided to the Firm (i) at a joint-defense/common-interest meeting in December 2017; (ii) in the follow-up calls which flowed from the meeting in the weeks after; and (iii) at a December 2017 "Pitch" meeting. While defendant did not have to reveal the specific confidential, privileged information that was shared in order to prevail, it did have to show that the context in which the communications occurred made it reasonably probable that the material confidential information would be shared. "The nature of the issues, including but not limited to the continuing dispute over the validity of the inverse condemnation theory of liability in a situation where cost-sharing is impeded or prevented by the relevant regulators, which would reasonably have been discussed and were discussed during these three related but separate points of contact . . . is such that disclosure of [defendant's] confidential and privileged information did occur."

Further, the Firm's own admission that a year after the joint-defense/common-meeting, defendant stopped communicating with the Firm about any confidential information regarding the Firm's representation of SDG&E or PG&E, conceded "too much since this implies that communications about the joint defense meeting a year earlier had already occurred."

While the court found the defendant's witnesses persuasive and the Firm's witnesses unpersuasive, it did conclude that the Firm "was proceeding in subjective good faith (believing that [the Firm] had not been shown anything material in confidence)." That did not, however, change the outcome of the disqualification motion.

As to the "balancing test," the court believed it did not apply because defendant had persuasively shown that a "substantial relationship" existed "between the subject matter of the three communications and the newly filed Woolsey Fire Cases." It did, however, conduct a "balancing test" and found that defendant prevailed on disqualification.

Significance of Decision

Defendant never retained the Firm to represent it in the Woolsey Fire Cases. Yet, because defendant and other California utilities had consulted with the Firm, and defendant had discussed a possible joint-defense arrangement with the Firm, and likely provided it with material confidential information, the Firm was disqualified from representing the plaintiff victims of the fire.

See O'Gara Coach Co., LLC v. Ra, 30 Cal.App.5th 1115, 1125 (2019).

See Wood v. L.A. County Waterworks Dist. No. 40, 2015 Cal.Super.LEXIS 403, * 2 (Superior Ct. L.A. County Sept. 1, 2015).