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Parent Company's Rejection of "One-Entity" Clause in Retainer Did Not Create Attorney-Client Relationship With Subsidiaries

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Lawyers for the Profession® Alert

e2Interactive, Inc. v. Blackhawk Network, Inc., Slip Copy, 2010 WL 1981640 (W. D. Wis. 2010)

Brief Summary
A parent company successfully negotiated with its law firm for the removal of a retainer provision, which had limited representation to the parent and had excluded subsidiaries. A magistrate judge for the Western District of Wisconsin nevertheless declined to disqualify the firm from representation adverse to one of the subsidiaries because removing the "parent-only" or "one-entity" provision merely returned the parties to ground zero and did not automatically create an attorney-client relationship with the subsidiaries.

Complete Summary
Defendant Blackhawk Network, Inc. (Blackhawk) moved to disqualify plaintiff's law firm based on an alleged current-client conflict of interest. Blackhawk's motion was based on two of the firm's matters.

First, the firm represented Safeway, Blackhawk's parent company, in a patent infringement suit. At Safeway's request the firm had removed a provision in the retainer agreement which had limited the attorney-client relationship to Safeway and had excluded its subsidiaries. Safeway and the firm later entered into a new retainer agreement in 2009 for the same matter, in which the "Safeway-only" provision was included.

The court held that the firm's agreements with Safeway did not create an attorney-client relationship with Blackhawk. By removing the provision limiting representation to Safeway, the court held, the firm did not thereby agree to the opposite provision — it did not agree to form an attorney-client relationship with Safeway's subsidiaries. Rather, removing the provision took the parties back to "ground zero." Moreover, the 2009 agreement, which included the provision limiting representation to Safeway, was controlling. And even if this added provision was "sneaked in" by the firm, "a large corporation with sophisticated in-house lawyers should . . . be held to the terms of an agreement it signed."

With respect to the second matter, the firm originally had sought to represent Blackhawk itself for lobbying purposes. Blackhawk rejected this offer and

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instead formed a coalition for lobbying purposes. The coalition then retained the firm. The court held that Blackhawk did not have an implied attorney-client relationship with the firm. Relying on Seventh Circuit precedent, the court held that Blackhawk did not have a *minimally* reasonable belief that the firm was representing it individually because, *inter alia*, Blackhawk had initially declined to be individually represented by the firm. The court also applied a Second Circuit test which prohibits lawyers who represent associations from taking positions adverse to members of the association on substantially related matters. The court held that the litigation matter involving patent infringement was not substantially related to the coalition lobbying matter, and thus that there was no cognizable conflict.

Significance of Opinion

This opinion recognizes that a law firm should not be deemed to represent some or all of a client's affiliates for purposes of disqualification unless the parties explicitly agree to such terms.

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