

# The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## **Carpenter & Zuckerman v. Cohen: Law Firm Prevailing on Anti-SLAPP Motion Not Entitled to Award of Attorney's Fees Where Firm's Associate Was the Billing Attorney**

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The California Court of Appeal (Second Appellate District, Division Five) recently ruled that the prevailing parties on an anti-SLAPP motion were not entitled to an award of attorney fees because the billing attorney had represented her own law firm as plaintiff. In this published opinion, the court dismissed the firm's contention that the attorney in question was an independent contractor. The decision is *Carpenter & Zuckerman v. Cohen* (2011) 195 Cal. App. 4th 373.

After plaintiffs Carpenter & Zuckerman, LLP and its partners prevailed on their anti-SLAPP motion challenging a cross-complaint for defamation and interference with economic advantage, the trial court granted the losing party's motion to tax costs on the ground that attorneys who represent themselves, or a law firm that represents itself, in litigation cannot recover attorney fees based on such representation.

Upon review, the Court of Appeal upheld the trial court's ruling. The Court of Appeal found that there was substantial evidence to support the trial court's finding that the billing attorney was an associate of the law firm. Specifically, the law firm's assertion that it had "retained" the billing attorney as an independent contractor conflicted with a prior plaintiff's declaration that the attorney was an associate at the firm. On top of that, the State B website listed the supposed contract attorney's address of record as that of the firm.

In upholding the trial court's order denying the fee award, the Court of Appeal concluded that the attorneys of a law firm representing itself, unlike in-house counsel to a corporation, are comparable to a sole practitioner representing herself and thus not entitled to fees. The court reasoned that the request for fees was impermissibly trying to recoup "lost opportunity costs" for the time the firm could have spent representing paying clients. As for the individual plaintiffs (the partners of the firm), the court held that they could not collect fees either, as there was no evidence of personal liability.