



California Corporate & Securities Law

When A Corporation Dissolves, Does The Attorney-Client Privilege Live On?

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Generally, a corporation's suit for legal malpractice results in a waiver of the attorney-client privilege. When the corporation's suit is brought derivatively, however, the privilege is not waived. *McDermott, Will & Emery v. Superior Court*, 83 Cal. App. 4th 378, 383 (2000). Therein lies a problem.

If the attorney-client privilege is not waived by the filing of a derivative suit for malpractice, then the attorney may be unable to defend the malpractice action. Thus, the Court of Appeal in *McDermott* held that an attorney's inability to disclose privileged communications barred a derivative action from proceeding.

Does the same rule apply when the corporation has been dissolved? Last year, the Second District Court of Appeal rejected an argument that *McDermott* does not apply to a dissolved corporation. *Favila v. Katten Muchin Roseman LLP*, 188 Cal. App. 4th 189 (2010). This week, the Fourth District Court of Appeal reached the same result in [Reilly v. Greenwald](#).

There is a certain symmetry in the Court of Appeal's approach. As the Court noted, it is "only logical that if a dissolved corporation continues to exist for litigation, it remains the holder of the attorney-client privilege during litigation."

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