Court Applies Standard Joint Representation Principle

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In his July 4, 2012 “Privilege Points” release, Tom discusses the attorney-client privilege in joint representations:

In most situations, any jointly represented client can access the files of the lawyer who represents the joint clients. This basic principle can have a dramatic effect if the jointly represented clients become adversaries.

In In re Equaphor Inc., Ch. 7 Case No. 10-20490-BFK, 2012 Bankr. LEXIS 2129 (Bankr. E.D. Va. May 11, 2012), the court dealt with files that a law firm created during its joint representation of Equaphor and three individual co-defendants in a derivative action. When Equaphor later declared bankruptcy, the bankruptcy trustee moved to compel the law firm to turn over its litigation files. The individual clients resisted the turnover – emphasizing that Equaphor had been only a "nominal defendant" in the derivative action. Id. at *9. The court rejected this argument, noting that "while [Equaphor] may have been named as a nominal defendant, there is no such thing as a nominal client of a law firm," and that "there is no support in the case law for a 'nominal defendant exception' to the principle that all clients are entitled to an attorney's files." Id. at *9-10, *10.

As in many other contexts, a corporate client's bankruptcy can put the client in the hands of someone whose interests are dramatically different from those of the pre-bankruptcy corporation.