How Do Courts Treat LLCs for Privilege Purposes?

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In his June 25, 2014 “Privilege Points” release, Tom Spahn discusses the “managing members” concept of privilege protection involving LLCs:

Limited Liability Corporations combine the characteristics of corporations and partnerships. Few courts have dealt with the privilege implications of these hybrid business entities.

In *Carpenters Pension Trust v. Lindquist Family LLC*, the court acknowledged that "[t]he application of attorney-client privilege to members of an LLC is a relatively uncharted area of law." No. C-13-01063 DMR, 2014 U.S. Dist. LEXIS 54335, at *8 (N.D. Cal. Apr. 18, 2014). The court ultimately applied the privilege principles applicable to corporations. After reviewing withheld documents *in camera*, the court concluded that despite the LLC's designation of one person to be the LLC's "sole manager," several other LLC members actually "communicated with each other and with the LLC's attorneys about legal advice relating to the LLC's business." *Id.* at *10-11. Because these members acted as the LLC's day-to-day "managing members," "disclosure of confidential information received by one managing member of the LLC to another managing member does not, by itself, defeat the attorney-client privilege." *Id.* at *11-12.

Lawyers representing LLCs should explicitly articulate various individuals' roles in seeking and acting on their legal advice, laying the groundwork for both privilege and non-waiver assertions if the need arises.