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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES RIVER INSURANCE)
COMPANY, an Ohio)
Corporation,)
)
Plaintiff(s),)
)
v.)
)
DIANA'S CARE HOME, a)
business entity form)
unknown, et al.,)
)
Defendant(s).)
)
_____)

No. C10-0446 BZ

**ORDER DENYING DEFENDANTS'
MOTION TO DISQUALIFY
PLAINTIFF'S COUNSEL**


Defendants the Castanedas and Rothstein have moved to disqualify the firm of Nemecek & Cole from representing the James River Insurance Company in this coverage dispute. However, no where have defendants identified any legal basis, in either case authority, statute or the Rules of Professional Conduct, which support the disqualification motion. Defendants' citation to Rules of Professional Conduct 3-300 and 310 in the reply do not help them. Those rules apply to conflicts between an attorney and his client. Defendants are not Nemecek & Cole's clients. To the extent defendants

1 generally allege that Nemecek & Cole have a conflict of
2 interest with them, that is not surprising. Ordinarily
3 counsel for the plaintiff is adverse to the defendants.

4 To the extent that defendants appear dissatisfied with
5 plaintiff's decision not to select Mr. Cohen as independent
6 counsel under the Code of Civil Procedure 2860, their recourse
7 is to seek review of that decision (which they have done); not
8 to seek to disqualify plaintiff's counsel in this action.

9 The Court finds no need for oral argument and vacates the
10 hearing on this motion presently scheduled for June 2, 2010.
11 For the foregoing reasons, defendants' motion to disqualify
12 Nemecek & Cole as counsel for the plaintiff in this action is
13 **DENIED.**

14 Dated: May 26, 2010

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16 _____
Bernard Zimmerman
United States Magistrate Judge

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18 DISQUALIFY.wpd