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**TREECE ALFREY MUSAT P.C.**  
**COLORADO LEGAL UPDATE**

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**COLORADO SUPREME COURT ELIMINATES  
INSOLVENT LLC MEMBER/MANAGER  
COMMON LAW OBLIGATIONS TO CREDITORS**

June 19, 2013

On June 10, 2013, the Colorado Supreme Court issued a unanimous opinion declaring that members and managers of an insolvent firm have no fiduciary duty to ordinary creditors of the LLC absent specific statutory authority.

The plaintiff, a creditor of a Colorado LLC, sued claiming that the LLC's managers authorized a distribution to the LLC's members that rendered the LLC insolvent and left it unable to pay the plaintiff. The plaintiff asserted a statutory claim for receiving an unlawful distribution in violation of section 7-80-606, C.R.S. (2012) against the LLC's members and a common law claim for breach of fiduciary duty against its managers. The defendants moved to dismiss both claims, arguing that the creditor had neither a right to sue for unlawful distribution under section 7-80-606, nor a right to assert a claim for violation of fiduciary duty against the defendant managers. The trial court granted the defendants' motion and, on appeal, the court of appeals reversed the trial court.

The Supreme Court concluded that under section 7-80-606, members may be liable for such claims to the LLC itself, but not to the LLC's creditors. They also held that the manager of an insolvent LLC does not owe the LLC's creditors the same fiduciary duty that an insolvent corporation's directors owe a corporation's creditors. Because of that, plaintiff creditors of LLCs may not assert a claim for either unlawful distribution against defendant members, or a common law breach of fiduciary duty against defendant managers, absent express statutory authority. Because Colorado's LLC Act does not provide such authority, the Court reversed and abolished any notion of such duty in Colorado.

The case is *Weinstein v. Colborne Foodbotics, LLC*, Colorado Supreme Court Case No. 10SC143, Opinion and Order dated June 10, 2013. A full copy of the opinion [can be found here](#).