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## **Former Brobeck Partners, New Firms Must Pay Back Bankrupt Estate**

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SAN FRANCISCO - Six years after San Francisco's Brobeck, Phleger & Harrison went bankrupt, two law firms that took on former Brobeck partners may have to pay the firm's estate the profits they made off the work those partners brought with them.

U.S. Bankruptcy Court Judge Dennis Montali established that potential liability on July 2 when he ruled on the Brobeck trustee's lawsuits against Dorsey & Whitney and Orrick, Herrington & Sutcliffe. The lawsuits also named as defendants six Dorsey partners and four Orrick partners acquired from Brobeck.

The Brobeck trustee, Ronald Greenspan, sought to return to the bankrupt estate proceeds that Dorsey and Orrick gained from the work brought by the 10 partners.

The question before Montali was a matter of first impression: how existing laws governing law-firm dissolutions relate to the laws that protect creditors' rights.

The ruling is likely to have high-dollar ramifications for at least one other law firm undergoing a high-profile bankruptcy proceeding: Heller Ehrman.

The fact that partners can't jump ship with the profits from their remaining work was established with *Jewel v. Boxer*, a 1984 California case that found that fees from unfinished work must return to a defunct law firm if that firm doesn't make a plan in its partnership agreement for how it will divide up such work if the firm dissolves.

Montali's decision this month was the first to determine how that doctrine relates to California's updated partnership law, the Revised Uniform Partnership Act of 1994. Until Montali's ruling, *Jewel* had only been applied under the state's old partnership law. Montali's decision will also likely influence the way law firms across the state write their partnership agreements.

**Bennett Murphy of Hennigan, Bennett & Dorman**, the Brobeck trustee's attorney, said Montali's ruling shows "the *Jewel* doctrine is alive and well under current partnership law."

When Brobeck dissolved, its partners sought to waive their liability under Jewel by voting for a final partnership agreement that allowed partners to take their work with them. The Brobeck estate would just receive client payments for work completed before the firm dissolved, but not for work done on existing matters after the dissolution, the agreement stated.

Montali determined that partners are free to write a Jewel waiver into their partnership agreement but the waiver won't hold up if it's instated after the firm is insolvent. At that point, the interests of the firm's creditors trump any last-minute agreements between the partners.

"In a time when the financial collapse of legal institutions can occur quickly," Montali wrote, "a last-minute attempt at order rather than chaos cannot prevail over the rights of that firm's creditors."

Montali found that such an agreement would be considered a fraudulent transfer allowing Brobeck's partners to give away the profits from ongoing work without Brobeck getting anything in return.

"We're very happy with the opinion," said Jonathan Hughes of Howard Rice Nemerovski Canady Falk & Rabkin, one of Orrick's attorneys. "We feel that this significantly limits any liability that Orrick would have." That's because a large piece of the work that it acquired from Brobeck was a contingency-fee matter Montali found to be exempt from the question on which he was ruling.

As a result of Montali's ruling, the partners who jumped ship from San Francisco-based Heller Ehrman last year are also likely to owe lots of money to their own bankrupt firm as they complete work they began at Heller.

Attorneys working on Heller's bankruptcy said the facts in Brobeck's case are nearly identical to those in Heller's case.

Thomas Willoughby, lead attorney for Heller's creditors' committee, said the committee was waiting until Montali ruled on Brobeck to file lawsuits under the Jewel doctrine against former Heller partners and their successor firms.

He said liabilities under Jewel are "clearly one of the big issues" in the Heller bankruptcy. "I think it was a big victory for the Brobeck trustee," Willoughby said.