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Brobeck Workers See Evidence of Collusion

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The Recorder
03-23-2005

Former Brobeck, Phleger & Harrison employees filed a court document Friday that raises new questions about whether the firm's prospective merger partner knew about its pending collapse well before its own partners -- and in fact played a role in it.

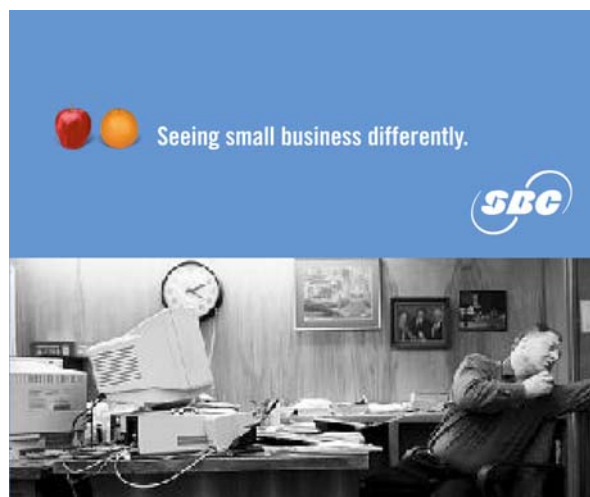
The employees are suing Brobeck and Morgan, Lewis & Bockius for \$20 million in severance pay. They contend Morgan Lewis -- Brobeck's prospective merger partner -- became Brobeck's successor when it hired about 60 partners and dozens of associates and staff. The filing urges U.S. District Court Judge Claudia Wilken to deny Morgan Lewis' request to have the suit tossed out.

Drawing on deposition testimony and discovery responses, lawyers for the employees outline communications between then-Brobeck Chairman Richard Odom and Francis Milone, the chair of Morgan Lewis, that they say suggest Morgan Lewis knew before the Brobeck partnership that the firm was disbanding.

And they point to a \$300,000 fee that Morgan Lewis paid law-firm consultant Ralph Savarese for his help in bringing 146 Brobeck lawyers to Morgan Lewis after Brobeck disbanded in February 2003. Odom, they note, had originally hired Savarese for merger advice, agreeing to pay him \$650,000 if a full merger was completed and less if fewer than 200 attorneys joined the "successor" firm.

The employees' attorneys also contend that a month before Brobeck dissolved, Morgan Lewis undertook a study to determine the impact Brobeck's liquidation would have on its partners. At that time the two firms were in merger discussions.

"Now we have evidence that raises legitimate inferences of Morgan Lewis' involvement in Brobeck's decision to liquidate," said the employees' attorney Arthur Lazear, of Oakland, Calif.'s Hoffman & Lazear.



"It strengthens our overall case," added the firm's H. Tim Hoffman. "We have more than enough to get a jury to agree with us."

The employees, led by Robert McCaffrey, aka Broke Beck, filed suit against Brobeck and Morgan Lewis for 60 days' severance pay. They claim the firms violated the federal Worker Adjustment and Retraining Notification Act for failing to give Brobeck employees 60 days' notice of the firm's closure.

The suit against Brobeck was stayed when the firm went into bankruptcy. The employees claim Morgan Lewis is liable because the firm purchased a part of Brobeck's business and is a successor of Brobeck.

Last year, Wilken ruled that it was up to a jury to decide whether Morgan Lewis purchased part or all of Brobeck's business. Morgan Lewis filed a second motion for summary judgment March 4.

The firm argues that that it purchased only about 2 percent of Brobeck's total assets -- paying Citibank \$2.1 million for the firm's furniture, fixtures and equipment -- which wasn't sufficient to trigger liability as a part purchaser or successor to Brobeck. Morgan Lewis also says that it was not responsible for notifying Brobeck employees of the firm's closure since they were already terminated at the time Morgan Lewis purchased Brobeck assets on Feb. 14, 2003.

Morgan Lewis' attorney, Michael Kahn, of Folger, Levin & Kahn, could not be immediately reached for comment.

In the employees' Friday filing, Hoffman argues that by the time Brobeck employees were finally terminated, Morgan Lewis had essentially taken over the firm. He notes, for example, that Brobeck partner Stephen Snyder was employed by Morgan Lewis at the time he sent a notice to Brobeck employees that they would be terminated as of Feb. 14, 2003.

Hoffman also contends in the filing that "Morgan Lewis conspired and/or participated in the downfall of Brobeck" so that it could acquire the part of Brobeck it wanted.

He writes that on Dec. 23, 2002, Citibank sent Brobeck a formal notice of default and demand for payment of its entire debt, triggering the partner's individual recourse obligations. While Odom did not tell his partners of the notice, Hoffman asserts, he told Morgan Lewis' Milone.

A few days later Milone asked the executive director of Morgan Lewis to analyze the financial impact Brobeck's liquidation would have on its partners, the court filing alleges.

The court document also contends that while Milone claimed he did not communicate with Odom until he learned, along with the rest of the world, that Brobeck was closing, the two had exchanged e-mails just prior to Odom's Jan. 30, 2003, announcement to partners, associates and staff that Brobeck was shutting down. Milone had sent a voice mail to all Morgan Lewis partners earlier that day informing them of the exact time Odom would be speaking to Brobeck partners, the filing states.

"The evidence strongly suggests that Milone knew in advance not only that Odom was going to shut Brobeck down, but moreover exactly when he was going to do it," the filing states.

Wilken is scheduled to hold a hearing on Morgan Lewis' motion for summary judgment April 8. The case, *McCaffrey v. Brobeck, Phleger & Harrison*, C03-2082, is set for trial in July.