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Staffers File Lawsuit Against Brobeck

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Former employees of Brobeck, Phleger & Harrison filed suit Monday seeking 60 days severance pay from the now-defunct San Francisco-based firm and from Morgan, Lewis & Bockius, the Philadelphia-based firm that took over much of Brobeck's operations in February.

The complaint, filed in San Francisco Superior Court, claims that both firms violated the California State Workers Adjustment and Retraining Notification (WARN) Act and California Labor Code by failing to provide employees 60 days notice -- or 60 days severance pay in lieu of notice -- that the firm was to close or a mass layoff was to occur.

Mark Thierman, a labor lawyer based in Reno, Nev., who represents the plaintiffs, said this was the first time he knew of in which the WARN Act -- which is directed at plant closings -- was applied to a disbanded law firm.

"I'm hoping Morgan will consider this the cost of doing business," Thierman said, "and honor their obligations" to these people.

Thierman estimates it would cost about \$3 million to pay plaintiffs 60 days severance. The suit, *McCaffrey a/k/a Broke Beck v. Brobeck*, 03-418426, names 34 plaintiffs. Thierman said he would probably amend the complaint to add 30 more plaintiffs.

The complaint contends that Morgan Lewis is responsible for the payment since it is an alter ego or successor to Brobeck. It states that on or about Jan. 29, Morgan Lewis "was in the offices of Brobeck overseeing the day to day operations" and on Jan. 30 Brobeck announced it was terminating its partnership.

On the same day, the complaint says, Brobeck attorneys asked employees "to begin downloading to CD-ROMs, data, including client information, from defendant Brobeck's computers for use by those same attorneys" who joined Morgan Lewis.

Brobeck's policy committee decided to disband the firm after merger discussions with Philadelphia-based Morgan Lewis fell through. Morgan Lewis subsequently hired scores of Brobeck attorneys and staff and took over much of Brobeck's space at its San Francisco

headquarters.

G. Larry Engel, a member of Brobeck's liquidation committee, said Monday afternoon that he had not seen or heard of the suit and could not comment on it. Morgan Lewis Chairman Francis Milone could not be reached for comment.

Employee Robert McCaffrey, who went by the online moniker Broke Beck, initiated a campaign to file suit against Brobeck soon after the firm announced it was disbanding. He subsequently hired Thierman to represent associates and staff.

The suit claims that under *Jewel v. Boxer*, 156, Cal.App.3d 171, the fees earned by Brobeck attorneys who continue working at a new firm must be used to pay the expenses of the former firm.

Thierman says he has received support from Brobeck attorneys.

"Even [those who were] opposing counsel on many cases are saying 'atta boy,'" Thierman said.