

EMPLOYMENT LAW

Lawsuit From Ex-Brobeck Employees Moves Ahead

■ A judge says a jury can decide whether Morgan Lewis is liable for violating state and U.S. labor laws.

By Erik Cummins
Daily Journal Staff Writer

Former employees of the defunct Brobeck, Phieger & Harrison can proceed with their lawsuit against Philadelphia's Morgan, Lewis & Bockius, U.S. District Judge Claudia Wilken ruled Tuesday.

Morgan Lewis could be deemed a "purchaser" of the defunct firm, Wilken wrote in a 14-page ruling, denying in part and granting in part Morgan Lewis' motion for summary judgment.

"A reasonable jury could determine that there was a sale of part or all of [Brobeck's] business," Wilken wrote. *McCaffrey v. Brobeck*, CO3-2082.

The plaintiffs claim Morgan Lewis is liable for Brobeck's failure to give its employees the 60 days' advance notice of layoffs required under the U.S. and California Worker Adjustment and Retraining Notification, or WARN, Act.

Brobeck dissolved Feb. 14, 2003.

Wilken rejected the employees' claim that Morgan Lewis was also liable as a successor or alter ego to Brobeck under *Jewel v. Boxer*, 156 Cal.App.3d 171 (1984).

Mark Thierman, a Reno employment lawyer representing 42 former Brobeck employees in the case against Brobeck and Morgan Lewis, hailed the decision as a victory for the plaintiffs.

"I'm thrilled," he said. "I got the deep pocket I'm looking for. I have a viable defendant."

Fifty-seven of Brobeck's 170 partners joined Morgan Lewis on Feb. 12, 2003, two days before Brobeck dissolved. Morgan Lewis also hired 250 associates and staff of the former firm.

Morgan Lewis argued that hiring Brobeck partners and staff and buying some of its assets did not make it a "purchaser" of Brobeck's business, and therefore responsible under the federal WARN Act for Brobeck's obligations.

"However, as Plaintiffs point out, Morgan Lewis did more than that," Wilken wrote. "Morgan Lewis also leased Brobeck's former premises, purchased access to Brobeck's informational infrastructure, obtained access to Brobeck's client files, and emphasized lawyer

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continuity in press releases geared toward convincing Brobeck's clients to become Morgan Lewis clients.

Thierman said that if successful, the plaintiffs could recover as much as \$10,000 to \$20,000 each for two months' wages from Morgan Lewis. He said as many as 400 to 500 attorneys and staff could be eligible.

Thomas Reinhert Jr., a partner and counsel to Morgan Lewis in Washington, D.C., said Wilken ruled in the firm's favor in three out of five issues.

"Morgan Lewis is not an employer of the plaintiffs, Morgan Lewis is not an alter ego, and no *Jewel v. Boxer* liability is involved," he said, referring to a complex case that helps specify how to dis-

tribute unfinished-business revenues.

The ruling, he said, left open two questions: whether Morgan Lewis was a "purchaser in part" of Brobeck under the federal WARN Act and whether it was a successor to Brobeck under the state WARN Act.

Morgan Lewis would demonstrate it was neither, he predicted.

A case-management conference is

scheduled March 5 at 1:30 p.m. in U.S. District Court in Oakland.

Brobeck's bankruptcy stayed Thierman's case against the San Francisco firm. In September, a group of the firm's former landlords filed an involuntary Chapter 7 petition against Brobeck. *In re Brobeck*, 03-032715-DM7.