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Staffers Aim to Sink Brobeck Deal

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The Recorder
10-22-2004

Former employees have entered the fray over Brobeck, Phleger & Harrison's bankruptcy, hoping to prevent a deal that could short-circuit their claims against the failed firm.

On Thursday, a group of former staffers objected to a proposed settlement in which Morgan, Lewis & Bockius would pay \$10.2 million to the Brobeck estate. The deal would avoid potential claims by the estate, including claims to revenue from unfinished business that Brobeck lawyers took with them to Morgan Lewis.

But it may also affect a separate federal suit filed by employees who say they are owed millions in severance pay.

As part of the \$10.2 million agreement, Ronald Greenspan, a trustee appointed to represent the Brobeck estate, agreed to defend Morgan Lewis against the employees' suit.

But in papers filed in a San Francisco bankruptcy court, employees argue that the agreement is neither fair nor reasonable "because it requires the trustee to assist in eliminating a potential alternative source of recovery for a significant class of creditors."

Led by Robert McCaffrey, the employees contend that under the federal and state Worker Adjustment and Retraining Notification (WARN) Act and California Labor Code, Brobeck should have provided employees 60 days' notice of the firm's closure or, in lieu of the notice, 60 days of severance pay.

In the federal court suit before U.S. District Judge Claudia Wilken, they argue that Morgan Lewis is liable as Brobeck's successor, since it hired 146 Brobeck lawyers -- including one-third of the partnership -- following the firm's collapse in February 2003.

Mark Thierman, a Reno, Nev., labor lawyer representing the employees, said Morgan Lewis took on approximately 2,500 active Brobeck cases when it hired the Brobeck lawyers.

"It's just outrageous" for the trustee to conclude that this work is worth only \$10 million, Thierman said. "That means the average fee per case is four grand. Come on. That's not going to cut it. It takes four grand to open a file over there."

Earlier this year, Wilken ruled that Morgan Lewis could not be held liable as an alter ego under the federal WARN Act, but could be held liable as Brobeck's successor under the state WARN Act.

If Wilken does hold Morgan Lewis liable for Brobeck's debts, the firm could be held responsible for the claims other creditors have against Brobeck, the employees said in the bankruptcy court

filing.

"Under such circumstances, it is substantially against the interests of the estate for the trustee to agree to cooperate with Morgan, Lewis in seeking to preclude their availability as an alternative source of recovery for the claims of objectors and the other creditors," they wrote.

Thierman said he was unaware that the employees' lawsuit was a point of discussion between Brobeck trustee Greenspan and Morgan Lewis until he saw the settlement agreement in August. Recent filings also demonstrate that the bankruptcy case has been lucrative for the attorneys and consultants representing Greenspan.

In a recent fee application filed with the court, Los Angeles-based Hennigan, Bennett & Dorman lists \$934,685 in attorney fees and \$81,510 in expenses. FTI Consulting Inc., Greenspan's financial adviser, requests \$1.1 million in fees and \$18,132 in expenses. And Jeffer, Mangels, Butler & Marmaro, which has acted as special counsel in the case, is requesting \$34,000 in fees.