

Morgan Lewis Could Face Suit From Former Brobeck Staffers
Brobeck Staff Ponders Suing Morgan Lewis

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SAN FRANCISCO - Morgan, Lewis & Bockius may be hit by a lawsuit by former Brobeck Phleger & Harrison employees who claim the Philadelphia firm should be held liable for violations of labor law as the successor of the now-defunct Brobeck Phleger.

Several former Brobeck Phleger staff members had retained Mark Thierman, of Thierman Law Firm by Thursday afternoon.

Thierman said that if Morgan Lewis moved into Brobeck offices and started operations before staff members were laid off, Morgan Lewis may be liable for violations under the Fair Labor Standards Act.

Thierman received calls from 10 Brobeck employees, he said, some of whom said they still have not been paid for accrued vacation time. Other staff members complained that severance payments had been stopped, that they cannot draw upon 401K retirement accounts, and that they have been denied COBRA health insurance.

As Brobeck's "alter ego" or "successor," Thierman said, Morgan Lewis would be liable for Brobeck employees' unpaid overtime, accrued vacation time, and WARN Act 60-day notice pay. Because penalties accrue daily for up to 30 days for certain of the violations, Thierman said he is waiting for the penalties to accrue.

Brobeck announced its dissolution Jan. 30. The firm's largest creditor, Citibank, is overseeing its liquidation as partners negotiate repayment of \$56 million in loans.

The potential new lawsuit would add to a mountain of legal woes facing former Brobeck Phleger partners. They already are embroiled in litigation with 17 partners who last year moved to Clifford Chance as well as ongoing litigation involving Brobeck Phleger's role in the dissolution of the Santa Monica firm Dickson, Carlson & Campillo.

Thierman said that Morgan Lewis is performing the same legal work, for the same clients, that Brobeck was performing before it officially closed on Feb. 14.

In addition, there are certain numerical benchmarks for successor liability. For instance, Thierman said, if 50 percent of the employees who worked at Brobeck go to work at Morgan Lewis, Morgan Lewis could be considered Brobeck's alter ego under labor laws. Although fewer than 50 percent of the firm's final attorney count have been announced as joining Morgan Lewis, it is not known what percentage of staff made the move following failed merger negotiations between the two firms.

"You've changed the form of what you're doing, not the substance," Thierman said.

Tom Sharbaugh, Morgan Lewis' firmwide managing partner said that the day after the merger failed, Morgan Lewis negotiated a new lease to assume Brobeck's San Francisco offices with the landlord.

He said Morgan Lewis also entered into an agreement to buy Brobeck's furniture and to license its phone lines.

"It can literally be done in a day," he said.

Steve Wall, deputy manager of Morgan Lewis' labor and employment law practice, denied that Morgan Lewis would have any liability as a successor to Brobeck Phleger.

There's an "extremely high standard under federal law" to prove alter ego or successor status, he said. "There are no facts to support it under this situation."

However, Thierman questioned how Morgan Lewis could be ready to do business in San Francisco so soon after the merger talks failed.

"One wonders what they thought when they walked away," Thierman said. "They didn't walk away. They just decided not to do the legal part of the deal."