

# Heller estate wins big against firms

By Kevin Lee  
Daily Journal Staff Writer

The Heller Ehrman LLP estate scored a major victory Monday in its pursuit of millions of dollars from four law firms that took on former Heller partners and allegedly wrongly profited from the unfinished business they brought with them.

In a decision that could have ramifications for other large law firm bankruptcies, U.S. Bankruptcy Judge Dennis Montali in San Francisco agreed with the Heller estate that Jones Day, Orrick, Herrington & Sutcliffe LLP, Foley & Lardner LLP and Davis Wright Tremaine LLP all benefitted from taking on business that originated at Heller in violation of fraudulent transfer laws.

"What remains, therefore, is proof at trial of the extent of Heller's damages, namely the amount earned by Defendants as profit on the unfinished business," Montali wrote Monday in his memorandum decision granting the Heller estate's motions for summary judgment.

Heller special litigation counsel Christopher Sullivan of San Francisco-based Greenfield Sullivan Draa & Harrington LLP said the Heller estate is seeking millions of dollars from the four firms to pay off creditors, though he declined to give an exact figure.

"We're very pleased with the excellent ruling and the very thorough treatment of the issues by Judge Montali," Sullivan said.

Montali has scheduled a status conference on May 7 to discuss a potential trial.

Headquartered in San Francisco, Heller had offices worldwide and approximately 700 lawyers before it dissolved in 2008, according to court filings. *In re Heller Ehrman LLP*, 08-bk-32514 (N.D. Cal., filed Dec. 28, 2008).



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Christopher Sullivan of San Francisco-based Greenfield Sullivan Draa & Harrington LLP

Earlier in its bankruptcy, the Heller estate sued 48 law firms that took on unfinished work that originated at Heller in an attempt to "claw back" those proceeds for the defunct firm's creditors.

Forty-four of those suits have reached settlement or been dismissed, but the four remaining defendants teamed up to counter the estate's claims.

"We expect this ruling to be reviewed by the district court and the 9th Circuit," said San Francisco-based Jones Day partner Robert A. Mittelstaedt, who is representing his firm in the Heller proceedings.

Orrick has demanded a jury trial in federal district court, according to Orrick's lead counsel, San Francisco-based Arnold & Porter LLP partner Jonathan W. Hughes.

"Orrick doesn't believe Heller is entitled to be paid for the work Orrick does for its clients," Hughes said.

Luther Orton of San Francisco-based Snyder Miller & Orton LLP,

the lawyer representing both Foley and Davis Wright, couldn't be reached for comment.

Based on past decisions, the four law firms were facing an uphill battle. Montali previously found for the Brobeck, Phleger & Harrison LLP estate on the question of whether partners could write in a last-minute waiver from liability known as a "Jewel Waiver," ruling that they could not because of the harm to creditors.

Heller shareholders also drafted a "Jewel waiver" in 2008 into their partnership agreement aimed at absolving shareholders from such liability, but Montali sided with the Heller estate's argument that the waiver constituted a fraudulent transfer because it was crafted when the firm was already insolvent and the Heller estate did not receive anything in exchange for the waiver.

"This is the first decision that definitively addresses and specifically analyzes the [fraudulent transfer]

liabilities of defendant law firms," Sullivan said, pointing out that the Brobeck litigation dealt primarily with the liability of Brobeck's former partners.

Montali also is overseeing the ongoing Howrey LLP bankruptcy. *In re Howrey LLP*, 11-bk-31376 (N.D. Cal., filed Apr. 11, 2011).

Howrey's Chapter 11 Trustee Allan Diamond filed the estate's first unfinished business clawback suits on Monday against both former Howrey partners and six law firms that hired them, including Shearman & Sterling LLP, Ropes & Gray LLP and Kilpatrick Townsend & Stockton LLP.

Sullivan said Montali's ruling in the Heller litigation Monday likely reinforces Diamond's position in clawback suits.

"I think it's going to be helpful to the trustee's efforts in the Howrey case and hopefully it will aid in his ability to collect for creditors."

kevin\_lee@dailyjournal.com