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Questions and Comments

NEWS RULINGS VERDICTS

Thursday, December 13, 2012

Mergers & Acquisitions**Wilson Sonsini gets job for Gilead in \$510 million deal**

Wilson Sonsini Goodrich & Rosati PC got the job of working for the Foster City-based company, the first acquisition the firm has done for Gilead.

Bankruptcy**Bankruptcy judges see authority sapped**

In a decision closely followed by lawyers involved in major law firm bankruptcies, the 9th U.S. Circuit Court of Appeals ruled last week that only an Article III judge can enter final judgments in fraudulent transfer cases.

Education**Van Cleave chosen as Golden Gate's new dean**

Golden Gate University School of Law on Wednesday announced Rachel Van Cleave as its new dean.

Litigation**Judge denies Avon's request to toss suit**

A federal judge denied cosmetics company Avon Products Inc.'s effort to dismiss a lawsuit accusing it of testing foreign-market products on animals despite the company's claims that it tests none of its products on animals.

Real Estate**Real Estate Deals**

Invesco Advisors purchased a 278,000-square-foot industrial building in La Mirada for \$27.5 million. Shaw Industries previously occupied the property, located at 16400 Knott Ave.

Government**Bar accuses lawyer of defrauding elderly doctor of \$3.5 million**

Stanford Law School graduate Wade A. Robertson Jr. could be disbarred for allegedly misappropriating \$3.5 million from a Maryland doctor. A Washington, D.C., jury hit him with a \$7 million malpractice verdict.

Judge takes rare step of joining district attorney's office

San Diego Superior Court Judge Luis Vargas is scheduled to retire Jan. 6 after 20 years on the bench and will immediately start work in the district attorney's office, though his role is still being worked out.

Law Practice**Musick, Peeler & Garrett LLP does business differently**

Musick, Peeler & Garrett LLP has bucked a lot of law firm trends. The firm doesn't have a summer associate program. It hired conservatively and, according to partners, didn't lay off any lawyers during the economic bust.

Corporate**Cooley guides new venture fund in leading "big data" charge**

Cooley LLP represented the newest "big data" venture fund devoted to seed funding and Series A

Bankruptcy judges see authority sapped

By Kevin Lee

In a decision closely followed by lawyers involved in major law firm bankruptcies, the 9th U.S. Circuit Court of Appeals ruled last week that only an Article III tribunal, such as a district court judge, can enter final judgments in fraudulent transfer actions.

The decision chips away at the power of bankruptcy courts, but also held that bankruptcy judges have legal standing to hear such suits and submit recommended rulings to district courts. *Executive Benefits Insurance Agency v. Peter H. Arkinson*, 11-35162.

Bingham McCutchen LLP counsel Jeffrey Rosenfeld, who penned an analysis of the decision for his clients this week, said the decision builds on a related U.S. Supreme Court ruling, *Stern v. Marshall*, 131 S. Ct. 2594 (2011). That ruling determined bankruptcy judges do not have final jurisdiction over state law counterclaims, which are considered core to bankruptcy proceedings. In *Executive Benefits*, the 9th Circuit said fraudulent transfer claims should also be considered core.

Previously, "the 9th Circuit had held that bankruptcy judges could enter final judgments on fraudulent transfer cases without violating Article III," Rosenfeld said.

Fraudulent transfer suits target parties who allegedly receive a wrongful transfer of assets, such as property or money, from an insolvent entity without exchanging something of reasonably equivalent value for it.

Such lawsuits provide a source of monetary recovery for large law firm estates such as Brobeck, Phleger & Harrison LLP and Heller Ehrman LLP.

Those estates have sued law firms that recruited away their partners, alleging those firms committed fraudulent transfers by keeping the fees from the work those partners brought along.

Bankruptcy practitioners on opposing sides in the Heller bankruptcy claimed victory for their respective sides following the circuit decision.

Jones Day, which is a defendant in a fraudulent transfer suit brought by the Heller estate, had asserted in an amicus brief to the 9th Circuit that district judges should have the final say over such suits.

"It makes sense for the district court to take these [fraudulent transfer] cases up because it's going to have to take them anyway," said Jones Day associate Nathaniel Garrett, who helped prepare the amicus brief and is preparing the firm's defense against the Heller estate. "There is a lot of merit to the idea that district courts take these matters up as quickly as possible."

But Christopher D. Sullivan, special litigation counsel to the Heller estate, said the ruling reinforces the notion that bankruptcy judges should have a hand in substantive analysis, a notion supported by a district court judge earlier in the Heller bankruptcy. Last year, defendant law firms in fraudulent transfer suits brought by the Heller estate requested to move those suits from bankruptcy court to district court.

U.S. District Judge Charles R. Breyer in San Francisco denied that request and asked U.S. Bankruptcy Judge Dennis Montali to prepare proposed findings of fact and conclusions of law for consideration. *Heller Ehrman LLP v. Arnold & Porter LLP et al.*, 11-CV-4848 (N.D. Cal., filed Sept. 30, 2011).

"[The appellate court ruling] provides further clarity and solidifies what Judge Breyer decided in *Heller*," Sullivan said. "The questions going forward are the nature of the process by which the district judge reviews the bankruptcy judge's findings."

Several lawyers noted that other circuit courts have come to different conclusions over what authority the bankruptcy judge has over fraudulent transfer suits and other proceedings deemed core to a bankruptcy.

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Law firms facing "unfinished business" lawsuits from the Heller Ehrman LLP estate claim that they should not be held liable because clients make the final decision on which firms to hire.

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San Francisco
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Specialty: anti-trust, intellectual property, international matters


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The estate of defunct law firm Heller Ehrman LLP and law firms that took on former Heller partners and their work have mapped out their next round of legal skirmishes.

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chapter in the book
of wisdom.

Thomas Jefferson



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Criminal

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Entertainment & Sports

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