Jewel v. Boxer Remains Center Stage as N.Y. Federal Court Applies "Unfinished Business" Doctrine in Coudert Bros. Liquidation

In the February 2012 issue of the Beazley Brief, we featured an article by Gibson, Dunn & Crutcher LLP partners Kevin S. Rosen and Christopher Chorba, and associate Matthew S. Kahn regarding the increasing frequency of suits by dissolving law firms against departing partners for taking the firm's "unfinished business," or pending client matters, with them to their new firms. In that article, which we re-publish here, Rosen, Chorba and Kahn explored the origins of the unfinished business doctrine in the California Court of Appeals decision in Jewel v. Boxer*, 156 Cal. App. 3d 171 (1984), and provided their thoughts on how a law firm can defend against a* Jewel*-based claim.*

The "unfinished business" doctrine and Jewel v. Boxer *have recently taken center stage again not only because of the dissolution of the Dewey & LeBoeuf LLP firm, but also due to a recent Southern District of New York decision weighing in on the issue in the Coudert Brothers LLP bankruptcy and siding with the* Jewel v. Boxer *Court.*

We again express our gratitude to partners Kevin S. Rosen and Christopher Chorba and associate Lindsey E. Blenkhorn for their update on this important issue.

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In *Development Specialists, Inc.* v. *Akin Gump Strauss Hauer & Feld LLP*, 2012 U.S. Dist. LEXIS 73994 (S.D.N.Y. May 24, 2012), U.S. District Judge Colleen McMahon ruled that ten different law firms must account for profits they made from former Coudert Brothers partners, who brought work that began at Coudert with them to their new firms. Like *Jewel*, the *Development Specialists* decision grounded the right to recover on an unfinished business claim in the fiduciary duties that lawyers have to their partnership, which continue even through dissolution. *Id*. at *16-21.

Development Specialists is notable for several reasons, not the least of which is that it applied the unfinished business doctrine to non-contingency cases, which the New York Court of Appeals has not addressed. *Id*. at *28-67. After extensively discussing New York authority and authority in numerous other jurisdictions, Judge McMahon concluded that none of the relevant pre-existing cases distinguished between the dissolving firm's property interest in contingency matters versus matters that were billed by the hour, ruling that "all client matters pending on the date of dissolution are assets of the firm – regardless of how the firm was to be compensated for the work." *Id*. at *28.

The decision is also significant because it reiterated the long-held rule under the Uniform Partnership Act ("UPA"), which is codified in New York, that departing partners are not entitled to deduct "reasonable compensation" for his or her post-dissolution work before remitting the balance to the former partnership. *Id*. at *23-25. Unlike in jurisdictions (such as California) that have adopted the Revised Uniform Partnership Act ("RUPA"), where a partner is entitled to reasonable compensation for services rendered in winding up the dissolved firm's business, the UPA's "no compensation rule" means that dissolutions in New York – home to many of the world's largest law firms – may involve much larger pools of profit than in RUPA jurisdictions. Importantly, however, the court was bound (although reluctantly so) to allow the departing partner to offset any "value" the unfinished business yielded as a result of the departed partner's post-dissolution "efforts, skill and diligence." *Id*. at *24-25 (noting intermediate New York appellate decisions such as *Kirsch v. Leventhal*, 181 A.D.2d 222, 586 N.Y.S.2d 330 (3d Dept. 1992), which the Second Circuit adopted in *Santalucia v. Sebright Transp., Inc.*, 232 F.3d 293 (2d Cir. 2000), permitting these deductions). The court was not able to perform these calculations on the existing record in *Development Specialists*, *Id*. at *81-82, and it remains to be seen whether this formula yields a deduction similar to RUPA jurisdictions for "reasonable compensation."

Given that the dissolving firm no longer exists and therefore cannot complete the unfinished business that it had been handling, the result in *Development Specialists* and others like it beg the question why the insolvent firm should have a claim to revenue that it can no longer practically generate. In any case, it is likely that we have not heard the last of this debate. It is possible that the New York Court of Appeals may finally weigh in on the issue, as it has thus far declined to do, or that the *Development Specialists* case could be reviewed by the Second Circuit (as Judge McMahon invited).

Finally, *Development Specialists* presents another opportunity to drive home the reminder that law firms can contract around these rules in their partnership agreement. Unlike the *Brobeck* and *Heller* cases discussed in the article republished below, Coudert Brothers' partnership agreement did not contain a *Jewel* waiver. As the court explained, "because the Coudert Partnership calls for the application of the Partnership Law to determine post-dissolution rights of the partners, the Former Coudert Partners have a duty to account for profits they earned completing the Client Matters at the Firms. If Coudert had wished it otherwise, the firm could have drafted its Partnership Agreement differently. It did not." *Id*. at *72. As the article below explains, there is no time like the present for healthy law firms to consider executing a *Jewel* waiver and taking other proactive steps to prevent exposure to potential liability based on *Jewel* and its progeny.