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## Defunct Heller Ehrman Opens Fight for Fees Before Calif. High Court

Nell Gluckman, The Recorder

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Eight years after its collapse, the law firm Heller Ehrman is still battling over the legal fees earned by departed partners.

In a [brief](#) filed Tuesday in California Supreme Court, a lawyer for the now-defunct firm argued that a dissolved law firm can recover its former partners' hourly fees once they are at a new firm if the fees were earned for a matter that was in progress when the old firm disbanded.

[sullivan-christopher-Vert-201611301514.jpg]

Representing Heller, Diamond McCarthy partner Christopher Sullivan argued that because of a rule articulated in California's Uniform Partnership Act, partners who left the firm for Jones Day, Davis Wright Tremaine, Foley & Lardner and Orrick, Herrington & Sutcliffe still had a responsibility to help pay the firm's creditors with profits earned from matters they started at Heller.

"The Unfinished Business Rule recognizes that cases and matters brought into a law firm are the products of the efforts of the partnership as a whole and is built on long-established and basic partnership principles," Sullivan wrote.

At the request of the U.S. Court of Appeals for the Ninth Circuit, California's highest court is considering the question of whether a dissolved law firm has an interest in legal matters that are in progress but not completed at the time that the firm dissolved.

Earlier this year, the Ninth Circuit was asked to rule on an appeal in a case that stemmed from Heller's 2008 bankruptcy. The firm had challenged a 2014 decision by U.S. District Judge Charles Breyer of the Northern District of California finding that the Heller estate had no claim to profits earned on client matters that former partners took with them to other law firms.

Breyer's decision reversed a [ruling by the bankruptcy court in Heller's case](#) that found that Orrick, Jones Day, Davis Wright and Foley had to pay back the Heller estate for fees earned

by partners they had hired away from the dissolving firm. A dozen other law firms that hired Heller lawyers had previously settled with the defunct firm's estate.

Unfinished business litigation has emerged out of other law firm dissolutions, including the bankruptcies of Coudert Brothers and Thelen. In those cases, the New York Court of Appeals determined that the dissolving law firms do not have a right to hourly fees earned by former partners once they're at their new firms.

If the California court were to rule the other way, in favor of Heller, "it would have major implications" for law firm dissolutions and mergers in California, said Leslie Corwin, a Blank Rome partner who has written a book about partnership agreements and who wrote Heller's dissolution plan.

Corwin said he agreed with Breyer's ruling and that of the New York court because law firms do not own clients or legal engagements.

"You can't penalize a law firm that takes on clients and attorneys from a dissolving law firm," Corwin said.

Attorneys for the four law firms are likely to echo that argument in their response briefs, which are due early next year. Jones Day is represented by Shay Dvoretzky, a partner at the firm; Orrick's counsel is Eric Shumsky, a partner at that firm; Foley is represented by Luther Orton, a former partner at Snyder Miller & Orton; and Davis Wright's counsel is Steven Hirsch, a Kecker & Van Nest partner.

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*Contact the reporter at [ngluckam@alm.com](mailto:ngluckam@alm.com). On Twitter: [@ngluckman](https://twitter.com/ngluckman).*

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