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## BARTALK

### BATTLING THE UNDEAD

*Jones Day took a lead role in the fight to turn back “unfinished business” claims from defunct firms.*

**U**NFINISHED BUSINESS claims have been a major headache for law firms that hired lawyers from dying firms—and then faced claims for the work those lawyers brought. In the Coudert Brothers, Thelen and Heller Ehrman bankruptcies, many firms paid eight- or nine-figure settlements when sued by trustees of the defunct firms.

Two recent decisions, however, appear to end such claims in New York and perhaps elsewhere. Much of the credit goes to Jones Day, which, as a defendant in claims involving three recent firm bankruptcies, has been unrelenting in trying to roll them back. While several other firms have also battled the claims, sometimes on the same grounds, Jones Day has always had its own counsel in the fight. The firm has “very strong views of what to emphasize, and other firms don’t always agree with us,” says senior antitrust partner Joe Sims.

Jones Day managing partner Stephen Brogan says that both clients and lawyers are hurt when bankruptcy trustees fight with a defunct firm’s former lawyers or their new firm over revenues. The firm also had a pragmatic motive: Jones Day may want to hire laterals from future firm failures.

For the effort, Brogan tapped Shay Dvoretzky, 39, an appellate whiz kid, and let him know he was free to shape the firm’s strategy—as long as settlement was never on the table.

Dvoretzky took aim at *Jewel v. Boxer*, a 1984 California state case cited as precedent in the Brobeck bankruptcy that opened the way for unfinished business claims in later law firm failures. Applying *Jewel* to law firm bankruptcies was bad law, Dvoretzky says. When firms implode, “clients have to go elsewhere. Individual partners are not taking clients for themselves,” he says. “They’re helping clients who are forced to find new homes. To fail to do so could constitute malpractice.”

On June 4 Dvoretzky stood before New York state’s highest court in Albany to argue that, under state law, Jones Day didn’t owe a penny to the estate of bankrupt Coudert on client matters that former Coudert partners brought to his firm. Then he raced to the airport for a chartered flight where he was the sole passenger—the only way, the firm said, to ensure his arrival in San Francisco the next morning, where he argued before U.S. District Judge Charles Breyer in a case stemming from Heller’s demise.

Breyer’s June 11 decision, which eviscerated the Heller trustee’s claims, closely tracked Dvoretzky’s own summary judgment brief. “A law firm—and its attorneys—do not own the matters on which they perform their legal services,” the decision began. “Their clients do.” And in a unanimous July 1 decision, the New York Court of Appeals concurred, ruling that in both the Coudert and the Thelen bankruptcies, state partnership laws that appeared to establish such claims weren’t applicable when a partnership dissolved.

A third case involving the Howrey bankruptcy is pending in bankruptcy court in San Francisco. Dvoretzky argued a motion to dismiss on July 29. A decision there, expected in early fall, will either provide trustees outside New York a new path forward for unfinished business claims, or put the last nail in their coffin.



**Shay Dvoretzky of Jones Day: Matters belong to clients, not firms.**

—JULIE TRIEDMAN