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CONFLICTING VIEWS AS TO THE UNFINISHED BUSINESS DOCTRINE

Thomas E. Rutledge*
Tara A. McGuire**

As the era of failed law firms, both large and small, continues,[1] so does debate as to the Unfinished Business Doctrine as most famously embodied in *Jewel v. Boxer*.[2] Notwithstanding its general acceptance over the last 30 years, it was recently rejected in New York. Demonstrating that New York was not setting a contrary trend, the Colorado Supreme Court subsequently affirmed the doctrine. This uncertainty as to the doctrine's application mandates that law and other professional firms consider and address the doctrine in their organizational agreements. Failure to do so only increases the likelihood of disputes, the expense of dispute resolution, and perhaps surprise as to the ultimate determination as to whether and how it should apply to a particular firm.

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* Thomas E. Rutledge is a member of Stoll Keenon Ogden PLLC resident in the Louisville, Kentucky office. A frequent speaker and writer on business organization law, he has published in journals including THE BUSINESS LAWYER, the DELAWARE JOURNAL OF CORPORATE LAW, the AMERICAN BUSINESS LAW JOURNAL and the JOURNAL OF TAXATION, and is an elected member of the American Law Institute.

** Tara A. McGuire is an associate at Stoll Keenon Ogden PLLC; J.D., University of Louisville School of Law (Spring, 2015).

[1] *See, e.g.*, Mudge Rose Guthrie Alexander & Ferdon v. Pickett, 11 F. Supp. 2d 449, 450 (S.D.N.Y. 1998) (factual discussion of Mudge Rose Guthrie Alexander & Ferdon firm dissolution in 1995); LaBrum & Doak, LLP v. Bechtle, 222 B.R. 749, 752 (Bankr. E.D. Pa. 1998) (factual discussion of LaBrum & Doak, LLP's dissolution in 1997); *see also* HERRICK K. LIDSTONE, JR., ISSUES IN PARTNER MIGRATION AND LAW FIRM DISSOLUTION 1–3, http://www.cobar.org/repository/Inside_Bar/Tax/migratory%20partners-law%20firm%20dissolution(1).pdf (reporting that Dickson, Carlson & Campillo dissolved in 1998; Altheimer & Gray dissolved in 2003; Adorno & Yoss LLP dissolved in 2011); Erin Fuchs, *The Eight Most Crushing Law Firm Implosions in the Nation's History*, BUSINESS INSIDER (Jun. 24, 2012, 11:30 AM), http://www.businessinsider.com/the-eight-most-spectacular-law-firm-collapses-in-history-2012-6 (reporting that Finley Kumble Wagner Heine Underberg Manley Myerson & Casey dissolved in 1988; Broback, Phleger & Harrison, LLP dissolved in 2003; Coudert Brothers LLP dissolved in 2005; Heller Ehrmann dissolved in 2008; Thelen LLP dissolved in 2008; Howrey LLP dissolved in 2011; Dreier LLP dissolved in 2009; Dewey Leboeuf dissolved in 2012); David Lat, *A Closer Look at the Morgan-Bingham Deal*, ABOVE THE LAW (Nov. 18, 2014, 1:02PM), http://abovethelaw.com/2014/11/a-closer-look-at-the-morgan-bingham-deal/ (reporting Morgan Lewis acquisition of Bingham McCutchen in 2014); Don Knox, *Breaking: Issacson Rosenbaum Will Close at Month's End*, LAW WEEK COLO. (Jun. 11, 2011), http://www.lawweekonline.com/2011/06/breaking-isaacson-rosenbaum-will-close-at-months-end (reporting that Isaacson Rosenbaum dissolved in 2011); Gus Lubin, *10 Huge Law Firm Collapses of the Decade*, BUSINESS INSIDER (Dec. 8, 2009, 7:30 AM), http://www.businessinsider.com/decades-biggest-law-firm-collapses-2009-12?op=1 (reporting that Thacher Proffitt & Wood LLP dissolved in 2008; Wolf Block Schorr & Solis-Cohen LLP dissolved in 2009; Jenkins & Gilchrist dissolved in 2007); Richard Piersol, *Harding & Shultz Law Firm is Dissolving*, JOURNAL STAR (Mar. 12, 2015, 11:00 PM), http://journalstar.com/business/local/harding-shultz-law-firm-is-dissolving/article_b5f1e841-1d7e-5ac0-bf51-9285a6147c02.html (reporting Harding & Shultz is dissolving), John Disney, *Morris Schneider Wittstadt Files for Bankruptcy*, DAILY REPORT (July 6, 2015), http://www.dailyreportonline.com/id=1202731432082/Morris-Schneider-Wittstadt-Files-for-Bankruptcy, Patrick George, *Clark, Thomas & Winters, Austin's Oldest Law Firm, Closes*, AUSTIN AM.-STATESMAN (Apr. 11, 2011), http://www.statesman.com/ news/news/local/clark-thomas-winters-austins-oldest-law-firm-close/nRY7w/ (reporting that Clark, Thomas & Winters is dissolving).

[2] 156 Cal.App.3d 171 (Cal. Ct. App. 1984).

JEWEL V. BOXER AND ITS PROGENY

The Unfinished Business Doctrine is exemplified by the decision rendered in *Jewel v. Boxer*, wherein the court considered the treatment of a contingency fee earned by one of two successor firms on a case that had been initiated with the predecessor firm.[3] Rejecting a formulaic division devised by the trial court, the court of appeals focused upon the language of the controlling partnership law—the attorneys had no written partnership agreement addressing the division of fees upon dissolution of the firm. Focusing upon the applicable partnership law, the court found that, (a) after dissolution, a firm continues for the purpose of completing partnership business,[4] and (b) no partner is entitled to additional compensation (*i.e*. compensation beyond the agreed sharing ratio under the original partnership agreement) for completing that partnership unfinished business.[5] Relying upon prior law including *Resnick v. Kaplan*,[6] the *Jewel* court held that all income derived from cases pending when the firm dissolved constitute firm assets that will be shared among the partners in accordance with their existing agreement. In rendering this decision the *Jewel* court expressly addressed claims that the rule it espoused interfered with a client's right to select counsel. Initially, it observed that,

> [E]ven though the client had the right to the attorneys of its choice, that right was irrelevant to the rights and duties between the former partners with regard to income from unfinished partnership business. . . . [T]he right of a client to the attorney of one's choice and the rights and duties as between partners with respect to income from unfinished business are distinct and do not offend one another.[7]

As for the claim that completing unfinished partnership business on these terms is disadvantageous to the partners performing the work because they would receive "only a portion of the income generated by such work," the court observed "this is all the former partners would have received had the partnership not dissolved."[8] Further, the burden would be shared by all former partners as to all unfinished business, so there is no particular burden imposed on any particular partner or partners to the exclusion of others.

Until recently, most states that have considered the question have followed the rule of

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3 *Id.*, *superseded by statute*, CAL. CORP. CODE § 16401 (West 2014). There are pre-existing cases directing an outcome similar to that in *Jewel v. Boxer*. *See, e.g.*, Rosenfeld v. Cohen, 146 Cal.App.3d 200 (Cal.Ct.App. 1983), *overruled on other grounds by* Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 869 P.2d 454 (Cal. 1994); Frates v. Nichols, 167 So.2d 77 (Fla. Dist. Ct. App. 1964).

4 CAL. CORP. CODE § 15030 (repealed 1999) (verbatim adoption of UPA § 30 (1914)).

5 CAL. CORP. CODE § 15018(f) (repealed 1999) (verbatim adoption of UPA § 18(f) (1914)).)

6 156 Cal.App.3d at 177 (citing Resnick v. Kaplan, 434 A.2d 582 (Md. Ct. Spec. App. 1980)). *Resnick* involved a dispute between two former partners to a dissolved law firm, one partner arguing that fees collected for work completed during the wind-up period should have been paid to him alone. 434 A.2d at 585. The appellate court upheld the trial court's determination that the collected fees were to be "allocated according to the percentages specified in the [partnership] agreement for the distribution of profits and losses." *Id.* at 587.

7 *Id.* at 177–78. It should be noted that while it may have been that all of the unfinished business of the Jewel, Boxer and Elkind firm was based upon contingency fee arrangements, that is not stated in the opinion, and the court did not base its determination on the contingency fee basis of the work.

8 *Id*. at 179.

Jewel v. Boxer.[9] For example, Texas courts have also followed the majority of states by adhering to the explicit terms of the partnership agreement when assessing ownership interests and profit distribution upon dissolution of a law firm. In *Kahn v. Seely*, the court reviewed appeals by two former law partners objecting to the trial court's 60/40 division of the firm's pre-dissolution profits and an award of post-dissolution services compensation in addition to the partnership interest.[10]

Seely had unilaterally acted to dissolve the partnership, after which Kahn argued that he was entitled to fifty percent of the firm's profits rather than forty percent, the percentage explicitly granted to him in the partnership agreement.[11] The court relied upon prior Texas case law, including *Dunn v. Summerville*,[12] and the 1914 Texas Uniform Partnership Act,[13] for the basic principle that "partnership profits are shared equally '[u]nless [the partners] otherwise agree . . . ."[14] The partnership agreement was found to unambiguously grant Kahn a forty percent interest in the profits of the firm, with the agreement further providing that if the partnership terminated for any reason other than death or disability, Kahn would "receive a percentage of the net fees and cases costs and loans equal to the percentage of ownership that he then possesses."[15]

The partnership agreement was not as explicit as to whether a partner would be entitled to compensation for post-dissolution services either in addition to or instead of the partner's share in the partnership profits, and the appellate court was required to fill the gap with the "no-compensation rule" of the Texas Uniform Partnership Act.[16] The Texas "no-compensation rule"[17] provided that "[n]o partner is entitled to remuneration for acting in the partnership business."[18] The appellate court rejected Kahn's argument that law partnerships are exempt from the "no-compensation rule," declining to follow *Cofer v. Hearne*,[19] an earlier Texas case holding to that effect. Instead, this appellate court joined with California's *Jewel v. Boxer* to follow the "majority rule" that every profession, including law partnerships, must be included

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9 *See* Douglas R. Richmond, *Migratory Law Partners and the Glue of Unfinished Business*, 39 N. KY. L. REV. 359, n.120 (2012) (collecting cases). *See also* Christine Hurt, *The Limited Liability Partnership in Bankruptcy*, AMERICAN BUSINESS LAW JOURNAL (2016, forthcoming), BYU Law Research Paper No. 15-04, http://ssrn.com/abstract=2568461 (discussing the interplay of LLP status and partner limited liability versus creditor expectations of claim satisfaction in bankruptcy).

10 980 S.W.2d 794 (Tex. App.—San Antonio 1998, pet. denied).

11 *Id.* at 796-97.

12 669 S.W.2d 319 (Tex. 1984).

13 TEX. REV. CIV. STAT. ANN. art. 6132b, § 18 (West 1970) (expired 1999).

14 *Kahn*, 980 S.W.2d at 797 (quoting *Dunn*, 669 S.W.2d at 319).

15 *Id.*

16 *Id.* at 798.

17 TEX. BUS. ORG. CODE § 152.203(c) (West 2006) (formerly found in TEX. REV. CIV. STAT. ANN. art. 6132b, §18(1)(f), but modified to provide for reasonable compensation for post-dissolution services).

18 *Id*. ("A partner is not entitled to receive compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.") For a recent treatment of the no-compensation rule under the Texas Business Organizations Code, see Johnson v. Graze Out Cattle Co., 2012 Tex. App. LEXIS 5790 (Tex. App.—Amarillo July 18, 2012) (applying the no-compensation rule to characterize a $30,000 distribution to a former partner from partnership proceeds as a payout of the agreed percentage of partnership profits rather than as additional compensation for performance).

19 459 S.W.2d 877 (Tex. Civ. App.— Austin 1970, writ ref'd n.r.e.).

in the term "business" for the purposes of state partnership law.[20] The court ultimately held that when dissolution of a partnership is caused by withdrawal, Texas law "does not permit compensation for post-dissolution services in winding up the partnership's affairs," and reversed the trial court's order for post-dissolution compensation of Seely and Kahn.[21]

While questions of unfinished business often arise as to pending contingency fee cases, most courts that have considered the question, as well as most commentators, have applied the rule to contingency as well as hourly fees matters pending at the time of the firm's dissolution.[22] *Jewel* has as well been applied to firms of professionals other than attorneys[23] and, curiously, applied to firms organized as professional service corporations.[24] In fact, it is fair to describe the *Jewel* rule as the consensus for the next thirty years.[25] That consensus would be challenged and indeed broken in 2014.

THE CONSENSUS FAILS

Thelen LLP voted to dissolve in 2008 shortly after adopting a new partnership agreement containing a *Jewel* waiver, *i.e.*, an agreement that the firm would have no claim on the

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20 *Kahn*, 980 S.W.2d at 799.

21 *Id.*

22 *See* Michael D. DeBaecke and Victoria A. Guilfoyle, *Law Firm Dissolutions: When the Music Stops, Does Anyone Need to Account for Any Unfinished Business?*, 14 DEL. L. REV. 41, 47, n.38 (2013); Dev. Specialist, Inc. v. Akin Gump Strauss Hauer & Feld LLP (In re Coudert Bros., LLP), 480 B.R. 145, 163-64 (S.D.N.Y. 2012) (collecting cases); In re Labrum & Doak, 227 B.R. 391, 410 (Bankr. E.D. Pa. 1998) ("[H]ourly-fees derived from work-in-progress pending at the time of dissolution are clearly property [of the firm]."); ROBERT W. HILLMAN, LAW FIRM BREAKUPS: THE LAW AND ETHICS OF GRABBING AND LEAVING § 4.4.3 (1990); ROBERT W. HILLMAN, HILLMAN ON LAWYER MOBILITY: THE LAW AND ETHICS OF PARTNER WITHDRAWALS AND LAW FIRM BREAKUPS § 4.6.1.2 (2nd Ed. 1998 & Supp. 2014 supp.) ("[T]here is no basis under partnership law for treating a matter billed in an hourly basis as something other than the unfinished business of a law partnership.") (italics deleted).

23 *See* DeBaecke & Guilfoyle, *supra* note 22, at n.3.

24 *See*, *e.g*., Sullivan, Bodney & Hammond, Prof'l Corp. v. Bodney, 820 P.2d 1248 (Kan. Ct. App. 1991); Fox v. Abrams, 210 Cal. Rptr. 260 (Cal. Ct. App. 2d Dist. 1985); Marr v. Langhoff, 589 A.2d 470 (Md. 1991). This treatment is curious in that corporate law generally does not incorporate an analytic underpinning of *Jewel*, namely the no compensation rule of partnership law. In *Fox* the Court wrote: "it is well-known that the primary purpose of the laws permitting professionals to incorporate was to allow them to take advantage of various tax benefits available to corporate employers and employees." 210 Cal. Rptr. at 265. This discounting of incorporation ignores the fact that it could have been done to avoid implications and consequences of organization as a partnership. *See also* Frank Easterbrook & Daniel R. Fischel, *Close Corporations and Agency Costs*, 38 STAN. L. REV. 271, 298 (1986) ("Proponents of the partnership analogy assume that participants in closely held corporations are knowledgeable enough to incorporate to obtain the benefits of favorable tax treatment or limited liability but ignorant of all other differences between corporate and partnership law.")

25 *See* Richmond, *supra* note 9. This is not to suggest, however, that the rule of *Jewel v. Boxer* had universal acceptance. *See*, *e.g.*, Mitchell v. Brewer, 2013 NCBC 14, 2013 WL 765372 (N.C. Super. Feb. 26, 2013) (in the context of a law firm LLC declining to follow *Jewel v. Boxer* and instead awarding former firm quantum merit claim against ultimate proceeds of contingency fee case). The *Mitchell* decision relied in part upon the decision rendered in *Lamb v. Wilson*, 92 N.W. 167 (Neb. 1902). The *Lamb* decision was relied upon as well in *Cafer v. Hearne*, 459 S.W.2d 877 (Tex. Civ. App.—Austin 1970, writ ref'd n.r.e). The court in *Kahn v. Seely* declined to follow *Cofer v. Hearne*, instead deciding to adopt the "majority rule." *Kahn,* 980 S.W.2d at 796. The *Kahn* court did not expressly overrule *Cofer*, but in discussing it stated that "*Cofer* is thus contrary to the express terms of the statute [Tex. Rev. Civ. Stat. Ann. art. 6132b, §6(1)] and the majority rule and is 'plainly wrong,' as several courts have noted." The court references *Jewel v. Boxer* as one of the courts noting the error in the *Cofer* decision. *Id.* at 799.

proceeds of any cases or matters ongoing at the time of dissolution save collection of then accrued but unpaid fees. Just less than a year later Thelen entered chapter 7 bankruptcy. Thelen's chapter 7 trustee sought to have the *Jewel* waiver set aside as a constructive fraudulent transfer and to collect for the Thelen estate the fees earned on the transferred unfinished business. Seyfarth, one of the firms to which Thelen attorneys had moved, was successful in its argument to the trial court that the Unfinished Business Doctrine does not apply to hourly matters.[26] The story was largely similar at Coudert Brothers LLP. Its partners agreed to dissolve in August 2005, and granted the executive committee the right to waive partnership claims; although not express in this decision, the granted waivers presumably included claims on fees earned after separation and transfer of cases and matters to different firms. Coudert filed for bankruptcy in September 2006. Developmental Specialists, Inc. ("DSI"), as administrator of Coudert's estate, brought suit against firms to which Coudert attorneys moved, seeking the proceeds of the transferred work. The defendants asserted that the *Jewel* doctrine does not apply to hourly (as contrasted with contingent) fee arrangements; the bankruptcy court did not accept that argument. Rather, it held that the *Jewel* doctrine did apply, and that "the Client matters were Coudert assets on the dissolution date. Because they are Coudert assets, the former Coudert partners are obligated to account for any profits they earned while winding the Client Matters up at the Firms."[27]

Seeking resolution of these determinations, the Second Circuit Court of Appeals certified to the New York Court of Appeals the following question:

> Under New York law, is a client matter that is billed on an hourly basis the property of a law firm, such that, upon dissolution and in related bankruptcy proceedings, the law firm is entitled to the profit earned on such matters as the 'unfinished business' of the firm?[28]

The New York Court of Appeals would hold in the negative, the proceeds of transferred hourly matters are not assets of the prior firm and may not be claimed by the bankruptcy estate in order to satisfy those creditor claims.[29] Not squarely addressing *Jewel's* reliance on UPA §§ 18(f) and 30,[30] the *Thelen* Court focused upon what is "property" of the partnership, holding that as a firm has no enforceable property interest in the matters entrusted to it by clients, there

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[26] Geron v. Robinson & Cole LLP, 476 B.R. 732, 742-43 (S.D.N.Y. 2012).

[27] Dev. Specialists, Inc. v. Akin Gump StraussHauer & Feld LLP, 477 B.R. 318, 326 (S.D.N.Y. 2012).

[28] In re Thelen, 20 N.E.3d 264, 268 (N.Y. 2014).

[29] A similar determination that hourly matters are not unfinished business was reached in Heller Ehrman LLP v. Davis, Wright, Tremains, LLP, 527 B.R. 24, 26 (Bankr. N.D. Cal. June 11, 2014). The Unfinished Business Doctrine, as least as to contingency matters, had prior to these decisions been accepted in New York. *See, e.g*., Shandell v. Katz, 629 N.Y.S.2d 437 (N.Y. App. Div. 1st Dept. 1995); McDonald v. Fenzel, 650 N.Y.S.2d 9 (N.Y. App. Div. 1st Dept. 1996). As to hourly fees the question was open. *See* Sheresky v. Sheresky Aronson Mayefsky & Sloan, LLP, 35 Misc. 3d 1201(A), 950 N.Y.S.2d 611 (Table), (N.Y. Sup. Ct. 2011) ("This being said, the court is not inclined to recognize a cause of action for unfinished business for hourly fee cases which has, hitherto, not been recognized by the New York courts.")

[30] *See also* Joan C. Rogers, *Profits From Finishing Bankrupt Firms' Cases Belong to Law Firms That Complete Them*, 83 LAW WEEK (BNA July 8, 2014) ("Hillman noted that while *Geron* addressed policy concerns and the problems facing lawyers and firms, 'it gave the statute fairly short shrift.' The court did not mention a couple of the most pertinent statutory provisions in the partnership law, nor did it discuss the effect on creditors, he said.").

is no property right against which the firm may make a claim after dissolution.[31] Furthermore, the court held that the Unfinished Business Doctrine, as applied in *Jewel*, "would have numerous perverse effects," including that, "[b]y allowing former partners of a dissolved firm to profit from work they do not perform, all at the expense of a former partner and his new firm, the trustees' approach creates an 'unjust windfall' . . . ."[32] Expanding on this point, the court also wrote, "[A]ttorneys would simply find it difficult to secure a position in a new law firm because any profits from their work for existing clients would be due their old law firms, not their new employers."[33] Ultimately, the *Thelen* decision rests upon the impact of a *Jewel* doctrine obligation among partners upon the perceived ability of clients to retain counsel of their choosing.[34]

ARE *THELEN* AND *COUDERT BROTHERS* ANOMALIES?

Going against *Thelen* is a recent decision of the Colorado Supreme Court in which it upheld the *Jewel* rule in the context of a law firm organized as a Colorado LLC.[35] LaFond & Sweeney LLC was organized in 1995 and dissolved in 2008; at the time of its dissolution several cases, most notably the Maxwell False Claims Act action undertaken on a contingency basis, were pending. The Maxwell case went with LaFond to his new firm. Sweeney and LaFond were unable to come to agreement as to the division of any ultimate settlement in the Maxwell case. The trial court issued a quantum meruit judgment in favor of the L&S firm in the amount of up to $597,179.88 to then be divided equally between LaFond and Sweeney. Shortly after this decision was rendered Maxwell's qui tam action generated a judgment of some $23 million with additional attorney fees of $2.2 million; the case ultimately settled for some $26 million and $2.6 million in attorney fees (with the contingency fee still in place; that percentage is not recited in the decision). Maxwell appealed, and the Colorado Court of Appeals held that the quantum meruit analysis of the trial court was improper, and that all proceeds of the contingency fee arrangement were firm property to be divided in accordance with LaFond and Sweeney's agreed sharing ratios of 50% each. This determination was affirmed by the Colorado Supreme Court.

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31 *In re Thelen*, 20 N.E.3d at 270-71 ("In short, no law firm has a property interest in future hourly legal fees because they are 'too contingent in nature and speculative to create a present or future property interest', given the client's unfettered right to hire and fire counsel.") (quoting Verizon New England, Inc. v. Transcom Enhanced Servs., Inc., 21 NY3d 66, 72 (N.Y. 2013)).

32 *In re Thelen*, 20 N.E.3d at 273. As is discussed below, at least in those states that have adopted RUPA, a partner working to complete the prior firm's business is entitled to reasonable compensation for doing so. *See infra* notes 48 through 53 and accompanying text. In those jurisdictions, this aspect of the *Thelen* court's reasoning is inapplicable.

33 *Id*. .

34 *See also* 1 GEOFFREY C. HAZARD, JR., W. WILLIAM HODES, & PETER R. JARVIS, THE LAW OF LAWYERING (4th ed.) § 5.21 at 5-85:

> [I]f a lawyer moved to a new firm but had to spend a significant amount of time finishing up old firm work, the new firm would be placed in the untenable position of paying for the lawyer's portion of overhead, without being able to realize a return on it. This would make the new firm less willing to welcome the new lawyer into its ranks, and that would have the cascading effect of making it more difficult for clients of the old firm to assure that their legal business was being attended to by counsel knowledgeable about their affairs.

35 LaFond v. Sweeney, 343 P.3d 939, 951 (Colo. 2015).

The Colorado LLC Act requires each member to "hold as trustee for it any property, profit or benefit derived . . . in the winding up" of the LLC's business.[36] Unlike Colorado's current partnership act, an adoption with modification of the Revised Uniform Partnership Act which affords a partner the right to compensation for services rendered in completing business pending at the time of the partnership's dissolution, the Colorado LLC Act is silent as to such a right of compensation.[37]

Substantively, the court first determined that a contingency fee case is firm property:

> That a pending contingency fee case is business of a dissolved LLC follows from the fiduciary nature of the attorney-client relationship. With respect to law firms, absent a special agreement, the client employs the firm and not a particular lawyer. During the dissolution of a law firm, attorneys continue to owe clients ethical and legal duties such as ensuring that the client's matter is handled properly.[38]

Tellingly, and here significantly departing from the *Thelen* decision, the Colorado Supreme Court found that, notwithstanding Maxwell's decision that LaFond should handle the matter after the dissolution:

> Maxwell's choice in this regard did not alter the contingent fee agreement that was in existence at the time of L&S's dissolution; nor did it alter the rights and duties LaFond and Sweeney owed to each other under their business arrangement. The contingent fee agreement remained in place, and LaFond had a duty to carry forward the representation undertaken by the LLC. Accordingly, the *Maxwell* case constituted business of the LLC for the purposes of determining the rights and duties of LaFond and Sweeney toward each another.[39]

In response to LaFond's argument that this application of the Unfinished Business Doctrine interferes with the client's right to counsel, in that "an attorney would be unwilling to represent the client unless the attorney is entitled to additional compensation for his work,"[40] the Colorado Supreme Court wrote the following:

> We are unaware of any authority for the proposition that fiduciary duties attorneys owe to their firms may be eschewed under the circumstances of a case like the one before us. The division of the contingent fee between LaFond and Sweeney does not affect the amount of money Maxwell had to pay upon successful resolution of his case. Hypothetical harm, as opposed to actual harm to the client's ability to choose counsel in the case, is not a pertinent consideration when determining the rights and

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[36] COLO. REV. STAT. § 7-80-404(1)(a) (West 2015). *Accord* REV. UNIF. P'SHIP ACT § 404(b)(1), 6 (pt. I) U.L.A. 143 (2001); UNIF. P'SHIP ACT § 21, 6 (pt. II) U.L.A. 194 (2001).

[37] *See* COLO. REV. STAT. § 7-64-401(8) (West 2015); REV. UNIF. P'SHIP ACT § 401(h), 6 (pt. II) U.L.A. 133 (2001).

[38] *LaFond*, 343 P.3d at 945.

[39] *LaFond*, 343 P.3d at 946 (footnote omitted).

[40] *LaFond*, 343 P.3d at 947.

obligations of attorneys to their firms. *See Jewel*, 203 Cal. Rptr. at 17 ("[T]he right of a client to the attorney of one's choice and the rights and duties as between partners with respect to income from unfinished business are distinct and do not offend one another.").[41]

Clearly *In re Thelen* and *LaFond* cannot be reconciled.[42] While at first blush it might be said that one is a case about hourly fee arrangements and the other contingency fees, that differentiation does not stand up to scrutiny. The determination made in *Thelen* as to what is firm property is applicable to both types of engagements. Likewise, the *LaFond* determination as to what constitutes ongoing business at the time of dissolution is equally applicable to contingent and hourly arrangements.

IN FAVOR OF *JEWEL* AND THE UNFINISHED BUSINESS DOCTRINE

Setting aside for now those firms that utilize a *Jewel* waiver, a topic further discussed below, clearly there is now a split as to the proper default rule. In California, New York, and Colorado it is clear as to what is the default rule. Obviously the question remains open in the vast majority of jurisdictions in this country and as well in different organizational forms—how might *LaFond* be decided under Colorado's enactment of RUPA, and how might *Jewel* be decided under California's new LLC Act? While available space does not permit a complete explication of the question, in our view the *LaFond* decision, it continuing the rule of *Jewel*, is the better policy.

An important function of the Unfinished Business Doctrine is to police otherwise opportunistic behavior by partners. If a partner cannot expect to make more off a file by working the case in the current firm than she would were she to dissolve the firm and leave with the file, the incentive to depart is eliminated. Consider firm ABC. During the partnership's term, B originates a particularly lucrative contingent fee case. B is aware that if the case is resolved while she is part of ABC that she will realize 30% of the net recovery; A and C will equally split the balance of 70% of the recovery. Absent the Unfinished Business Doctrine, B has a significant incentive to dissolve ABC by withdrawing therefrom and (with client consent) taking this case with her, all with an eye to keeping for herself 100% of the ultimate recovery offset only by ABC's claim in quantum meruit.[43] Likewise, absent the

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[41] *Id. Accord* Ellerby v. Spiezer, 485 N.E.2d 413, 416 (Ill. App. Ct. 1985) ("This right of the client is distinct from and does not conflict with the rights and duties of the partners between themselves either respect to profits from unfinished partnership business because since, once the fee is paid to an attorney, it is if no concern to the client how the fee is distributed among the attorney and his partners.").

[42] With due respect, the statement by Anthony Davis to the effect that the *Thelen* and *Heller Ehrman* decisions "represent the death of the unfinished business doctrine," overstated the situation unless his intention was to address only the law within New York. *See* Joan C. Rogers, *Profits From Finishing Bankrupt Firms' Cases Belong to Law Firms That Complete Them*, 83 LAW WEEK (BNA July 8, 2014).

[43] *See, e.g.*, Fracasse v. Brent, 494 P.2d 9, 13 (Cal. 1972); Barker v. Shapero, 203 S.W.3d 697, 699 (Ky. 2006). *See also* ROBERT L. ROSSI, 1 ATTORNEYS' FEES § 3:12 (3d ed. 2014) ("It is now fair to say that the overwhelming majority of jurisdictions hold that an attorney employed on a contingent fee contract who is discharged without fault on his part before the happening of the contingency is not entitled to recover on the contract, but may recover merely on a quantum meruit basis the reasonable value of the services rendered."); George L. Blum, *Limitation to quantum meruit recovery, where attorney employed under contingent-fee contract is discharged without cause*, 56 A.L.R. 5th 1, *3a (1998) (listing twenty-eight states and the District of Columbia as supporting the proposition "that an attorney

Unfinished Business Doctrine, presuming they are unwilling to accept only a quantum meruit recovery, A and C will have a claim for abusive termination by B of ABC. One benefit of the *Jewel* rule is that it preserves the agreement of the parties and avoids separate challenges based in bad-faith and breach of fiduciary duty.[44]

Another benefit of the Unfinished Business Doctrine is that it is consistent with default partnership law. Partners are free to negotiate a different rule. The fact that partners may not want to "jinx" the deal by focusing upon dissolution when forming the partnership is of no import.[45] At a time when the partners are negotiating any number of items, some of which, such as sharing ratios, are zero sum, they should either negotiate matters involving the dissolution of the venture or accept the consequences of the law's default rules.[46] Absent such private ordering, the *Jewel* Doctrine carries forward for all partners what was the agreement under which they have performed during the partnership's pendency. Not only is the partners' inter-se agreement preserved, but time-consuming disputes as to the treatment of income from individual matters are avoided.[47]

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employed on a contingent-fee contract who was discharged without fault on his or her part is not entitled to recover the full compensation on the contract, but is limited to a quantum meruit recovery."). *But see id.* at *4 (listing jurisdictions whose laws support the proposition that "an attorney employed on a contingent-fee contract who was discharged without fault on his or her part is not limited to a quantum meruit recovery but is entitled to recover the full compensation stipulated in the contract, on the theory of either constructive performance or breach of contract"); Howell v. Kelly, 534 S.W.2d 737, 739 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ) ("[A]n attorney under a contingent fee contract is permitted to recover on the contract in Texas"). *See also* Adam Shajnfeld, *A Critical Survey of the Law, Ethics, and Ecomonics of Attorney Contingent Fee Arrangements*, 54 N.Y.L. SCH.. L. REV. 773 (2009/2010) (reviewing distinctions between the laws of the various jurisdictions that restrict attorney contingency recovery to quantum meruit in circumstances of discharge other than for cause).

[44] *See*, *e.g.*, Page v. Page, 359 P.2d 41 (Cal. 1961); Leff v. Gunter, 658 P.2d 740 (Cal. 1983); Rosenfeld, Meyer & Susman v. Cohen, 146 Cal.App.3d 200 (Cal. Ct. App. 1983), *disapproved of by* Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 869 P.2d 454 (Cal. 1994) (holding partners' withdrawal from partnership in order to lure a major partnership client to their newly formed firm was in bad faith). Additional scrutiny of these problems is set forth in J. Hart, *Termination of the Fiduciary Duty of Business Associates Not To Compete for the Firm's Customers and Suppliers*, 14 DUKE L.J. 16 (1954); Thomas E. Rutledge, *Care and Loyalty After the Dissociation From or Dissolution of an Unincorporated Entity*, in RESEARCH HANDBOOK ON PARTNERSHIPS, LLCS AND ALTERNATIVE FORMS OF BUSINESS ORGANIZATIONS (Robert W. Hillman & Mark J. Loewenstein eds., 2015).

[45] *See also* Mark H. Epstein & Brandon Wisoff, *Winding Up Dissolved Law Partnerships: The No-Compensation Rule and Client Choice*, 73 CALIF. L. REV. 1597, 1614 (1985) ("Of course, the partners can agree by contract to provide for compensation in the event winding-up burdens fall inequitably. Nevertheless, because partnerships are likely to be forged in an atmosphere of optimism and mutual respect, partners may suppress notions of dissolution and conflict. Should the various partners consider the potential problems involved in dissolving, they may choose not to raise the issue for fear of disrupting the harmony of the moment.").

[46] *See also* Thomas E. Rutledge, *Shareholders Are Not Fiduciaries—A Positive and Normative Analysis of Kentucky Law*, 51 LOUISVILLE L. REV. 535, 559–60 (2012–13).

[47] *See also* Mark I. Weinstein, *The Revised Uniform Partnership Act: An Analysis of Its Impact on the Relationship of Law Firm Dissolution, Contingent Fee Cases and the No Compensation Rule*, 33 DUQ. L. REV. 857, 867 (1995) ("A significant advantage of the No Compensation Rule is its practicality due to its mechanical application. In implementing the rule, courts need not examine the dissolution process on an ad hoc basis to determine the fee proportion owed to each partner. The automatic application of the No Compensation Rule by courts also encourages private dispute resolution. Abandoning the rule in favor of quantum meruit compensation would force courts to examine, weigh, and formulate various factors to determine the amount of compensation owed to former partners. Courts would have to determine what percentage of the fee was accrued before and after dissolution, the expected value of the case, and how much time the partner actually spent working on the case.") (footnote omitted).

An important change in the underlying law has been the abandonment of the no compensation rule of UPA § 18(f) and the adoption of a reasonable compensation rule as set forth in RUPA § 401(h).[48] At first blush this differential between the partnership acts could indicate that partnerships governed by the new law[49] should not be subject to the rule of *Jewel v. Boxer*. Almost certainty this overstates the case. In a partnership governed by RUPA § 401(h), a partner completing partnership business is entitled to "reasonable compensation" for completing partnership business as part of its winding up. Seldom if ever will "reasonable compensation" equal all proceeds of that engagement.

While there is to date a dearth of case law on the interpretation of RUPA § 401(h), one paradigm would be to consider the claim as in the nature of a quantum meruit action by the partner against the firm.[50] Once the value of the services rendered in completing the partnership business has been thereby determined, the net proceeds would be firm assets divided among all of the partners in accordance with the sharing ratios set forth in the partnership agreement.[51] In addition, the "reasonable compensation" provided for in RUPA § 401(h) provides for disparate treatment among the partners who oversee and conclude the firm's unfinished business. Partners who undertake the more onerous tasks will be compensated for doing so while those who complete the less strenuous tasks will receive proportionally less compensation for the services rendered on the partnership's behalf.[52] In consequence, RUPA's adoption of a compensation rule, in opposition to UPA's no compensation rule, only adds another step in the process but does not otherwise alter the Unfinished Business Doctrine, even as it militates a perceived negative consequence of the prior law.[53]

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48 *See* REV. UNIF. P'SHIP ACT § 401(h), 6 (pt. I) U.L.A. 133 (2001) ("A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership"). *Compare* UNIF. P'SHIP ACT § 18(f) (1914), 6 (pt. II) U.L.A. 101 (2001) ("No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.").

49 RUPA has been adopted in thirty-six states, the District of Columbia and the Virgin Islands. *See* REV. UNIF. P'SHIP ACT, 6 (pt. I) U.L.A. (Supp. 2014) 1.

50 The comments to RUPA provide no guidance as to how this "reasonable compensation" is to be determined. *See also* Weinstein, *supra* note 47, at 859 ("[T]he drafters did not provide or articulate a standard, formula, or methodology to be utilized by courts faced with this issue of requested compensation.").

51 *See also id*. at 879–84 (setting forth a paradigm for determining adequate compensation under RUPA § 401(h)).

52 *See also id*. at 875 ("The phenomenon of "lock out" can be avoided by the RUPA Section 401(h). The financial disincentive of completing a particular client's contingent fee case which requires a disproportionate amount of time and effort, is eliminated by awarding compensation to an attorney who has excessive winding up burdens.").

53 *See also* Joan C. Rogers, *Profits From Finishing Bankrupt Firms' Cases Belong to Law Firms That Complete Them*, Bloomberg BNA (July 16, 2014), http://www.bna.com/profits-finishing-bankrupt-n17179892367/ ("Under RUPA, he explained, partners are entitled to reasonable compensation for winding up a dissolved firm's business; accordingly, former partners of a dissolved firm and their new firms would not be deprived of all recompense for their work if the unfinished business doctrine were applied. Because RUPA furnishes a way out from the dilemma that lawyers and firms face in UPA states by allowing firms to finish business but be compensated, courts applying RUPA may be more likely to accept the unfinished business doctrine for hourly fee matters that former partners of dissolved firms take to other firms, Hillman said.").

PROTECTION OF GENERAL CREDITORS

While the objective of the Unfinished Business Doctrine is to recover to the partnership the fruits of those projects in process at the time of dissolution with the objective of sharing the net proceeds among the partners in accordance with their agreed sharing ratios, it must be recognized that the rule first protects the rights of partnership creditors.[54] As exemplified by the Thelen and Coudert Brothers bankruptcy cases, third-party creditors of the firms remain unpaid; consequent to elections by the firms to be limited liability partnerships the personal assets of the partners are not available to satisfy those creditors.[55] If firm assets do not include unfinished business, then the creditors are restricted to collections on accounts receivable outstanding as of the firm's dissolution/bankruptcy. It will be common for those assets to be insufficient to satisfy those creditor claims.[56] While the shifting of risk to unsecured creditors is the accepted and intended effect of affording business owners limited liability,[57] firms advertise their credit worthiness based on factors including their history of exploiting client relationships and the income being currently derived from them.[58] Creditors may legitimately assert that they extended credit against the firm's recognition of that income. One may question whether New York's rejection of the Unfinished Business Doctrine works an unjust hardship upon the creditors of those firms. Will lenders now insist upon a loan covenant precluding the inclusion in the partnership agreement of a *Jewel* waiver and require the partnership agreement to define as partnership property the proceeds realized upon all engagements existing at the time the firm dissolves?

PROTECTION OF RETIRED PARTNERS

As a subset of creditors as discussed above, there are retired partners who have claims on

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[54] *See, e.g.*, Richmond, *Migratory Law Partners*, *supra* note 9, at 362 ("But dissolved law firms have creditors, and firms that either voluntarily or involuntarily enter bankruptcy following dissolution create estates administered by bankruptcy trustees who are charged with maximizing the value of the estate."). *See also* UNIF. P'SHIP ACT § 38, 6 (pt. II) U.L.A. 487 (2001); N.Y. P'SHIP ACT § 69. *Accord* TEX. BUS. ORG. CODE § 152.706(a); KY. REV. STAT. ANN. § 362.1-807(1); REV. UNIF. P'SHIP ACT § 807(a), 6 (pt. I) U.L.A. 206 (2001); *id.* cmt. 2 ("Subsection (a) continues the rule of UPA Section 38(d) that, in winding up the business, the partnership assets must first be applied to discharge partnership liabilities to creditors.")

[55] *See, e.g.*, N.Y. P'SHIP ACT § 121-1500; DEL CODE ANN. tit. 6, § 1550; TEX. BUS. ORG. CODE § 152-801(a).

[56] Another source of funds, depending upon state law, will be the recovery of partner distributions made when the firm was insolvent. *See, e.g.*, DEL. CODE ANN. tit. 6, § 15-309 (2000); KY. REV. STAT. ANN. § 362.1-932 (2013). Neither New York nor Texas has an equivalent provision.

[57] *See, e.g.*, I. MAURICE WORMSER, DISREGARD OF THE CORPORATE FICTION AND ALLIED CORPORATION PROBLEMS 18 (Baker Voorhis & Co., 1927) ("The policy of our law to-day sanctions incorporation with the consequent immunity from individual liability. It follows that no fraud is committed in incorporating for the precise purpose of avoiding and escaping personal responsibility. Indeed, that is exactly why most people incorporate, and those dealing with corporations know, or at least are presumed to know, the law in this regard."); Stephen M. Bainbridge, *Abolishing LLC Veil Piercing*, 2005 U. ILL. L. REV. 77 (2005) ("It is generally accepted that limited liability creates negative externalities. Limited liability allows equity holders to cause the firm to externalize part of the risk and costs of doing business onto other constituencies of the firm and, perhaps, even onto society at large.").

[58] *See, e.g.*, Private Placement Memorandum from Dewey & Leboeuf LLP 18 (Martin 2010), http://chapter11cases.com/2012/05/10/read-the-private-placement-memorandum-for-dewey-leboeufs-125-million-senior-secured-notes/ ("Client relationships historically have tended to be long-term due to the in depth client knowledge Dewey maintains to provide exceptional service. The level of trust and familiarity fostered by the long-standing relationships with Dewey's clients help minimize the risk of losing clients to competitors.")

firm assets by reason of non-ERISA benefit plans which provide, *inter alia*, for certain payments post-retirement, typically but not necessarily based upon some function of the retired partner's income in the years preceding retirement. Absent the Unfinished Business Doctrine these obligations are, being charitable, at risk.

By way of example, in March 2015 the Lincoln, Nebraska firm of Harding Shultz announced it was dissolving.[59] According to a press report, the dissolution of the firm was precipitated by two partner's retirements, which triggered certain payment obligations.[60] Reading between the lines, other attorneys had no interest in working to fund those obligations and left, ultimately precipitating the firm's demise.[61]

Moving from the particulars of the Harding Shultz firm, partners who anticipate often significant payments upon retirement may find those commitments to be illusory if the Unfinished Business Doctrine is not applied. Assuming the firm has elected a limited liability structure,[62] the firm's assets will be those on hand as of dissolution plus the accounts receivable that are ultimately collected. Even assuming that the obligation to make the retirement payments have a higher priority than other claims, it cannot be expected that those accounts will satisfy the debts undertaken in prior years. Conversely, application of the Unfinished Business Doctrine generates additional funds, through which the firm may discharge those obligations.

THE COST & EFFECT OF A *JEWEL* WAIVER

As is often the rule in business organizations, this question can be avoided by careful drafting of the organic document. Some firms will include a *Jewel* waiver.[63] To include such a provisions is their decision and one which should be taken only after consideration of the impact of that provision on firm unity and possible negative consequences to those attorneys who post-dissolution do not share in the fee generated on a case pending at the time of dissolution. Imagine the firm of ABCD, which dissolves while a significant fee matter (whether it is contingent or not does not matter), is party to a lease on which each of A, B, C and D are personally responsible either by reason of partner status or a personal guarantee. At the time of dissolution the remaining obligation on the lease is $200,000. A month after dissolution that fee comes in; by happy coincidence it is $200,000. If the $200,000 goes to successor firm CD, each of C and D has income with which to discharge their obligations under the lease; neither A nor B is so benefited. Conversely, if the $200,000 is property of

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59 *See* Richard Piersol, *Harding and Shultz Law Firm is Dissolving*, JOURNALSTAR.COM (Mar. 12, 2015), http://journalstar.com/business/local/harding-shultz-law-firm-is-dissolving/article_b5f1e841-1d7e-5ac0-bf51-9285a6147c02.html.

60 *See* Martha Neil, *Law firm is dissolving after nearly 60 years; senior partner points finger at retirement plan*, ABA JOURNAL.COM (Mar. 13, 2015), http://www.abajournal.com/news/article/law_firm_is_dissolving_after_nearly_60_years_senior_partner_points_finger/?utm_campaign=weekly_email&utm_source=maestro&job_id=150319AX&utm_medium=email.

61 *See also* Jeff Blumenthal, *Wolf Block work still unfinished*, PHILADELPHIA BUSINESS JOURNAL (Mar. 22, 2010), http://www.bizjournals.com/philadelphia/stories/2010/03/22/story2.html ("But the biggest issue of contention could be retired partners who lost their pension because of Wolf Block's unfunded pension plan. Those retirees must stand in line with other creditors.")

62 Harding Shultz was organized on a professional corporation. *See also supra* note 24.

63 *See also* HILLMAN, *supra* note 22, § 4.6.1.1 (discussing *Jewel* waivers).

ABCD, all of their obligations under the lease can be extinguished.

In effect, a *Jewel* waiver may perversely weaken the bonds which (should) hold a firm together by in effect encouraging each partner to be continuously on the lookout for opportunities to depart and thereby precipitate dissolution, taking engagements which look to be promising when the firm's claim under quantum meruit is low relative to the expected payoff. In light of that eventuality it can be determined that a *Jewel* waiver should be rejected in the organic agreement.

THELEN AND *COUDERT BROTHERS* GO TOO FAR IN RELYING UPON CLIENT CHOICE

The crux of the *Thelen* and *Coudert Brothers* decisions is that application of the Unfinished Business Doctrine would limit client choice by restricting the ability of attorneys to move from dissolved firms to new firms. On closer analysis the courts' reasoning is questionable.

In the context of a firm dissolution any number of factors may preclude a client following one or more attorneys to a new firm. There may be a conflict which precludes that engagement from transitioning.[64] The new firm may have a fee structure that the client finds undesirable. The client may have had an adverse relationship with that new firm such that they are not willing to transition their files to that firm. For these and any number of other reasons a client may either elect not to transfer an engagement to an attorney's new firm or be precluded from doing so. Simply put, a lawyer leaving one firm is under no obligation to insure that his or her new firm is acceptable to an existing client.

Second, as to the argument that clients may be, consequent to the Unfinished Business Doctrine, locked out of the counsel they desire, it is only that, an argument.[65] With a majority of jurisdictions having to date followed *Jewel*, it would be expected that the cases and commentary would recite incidents of lock-out. It is at minimum curious that such a calamitous outcome, one sufficient to justify the New York Court of Appeals setting aside the text of the Uniform Partnership Act, cannot be shown to have ever occurred.

Third, the *Thelen* Court's reasoning is that, inter-se, business organization law be damned if it might impact upon an attorney's ability to relocate to a new firm after another's dissolution. In effect there is one body of law governing the inter-se rights of law firm partners and another body of law governing the inter-se rights in non-law partnerships. Except, of course, there is not a separate organizational form for law partnerships versus other partnerships; UPA §§ 18(f) and 30 are the law of New York for all partnerships.

Fourth, the Court's reasoning that the attorney's attention on client matters should not be limited by financial obligations to former partners and the old firm is not by its terms limited to

64 Model Rules of Prof'l Conduct R. 1.10 (2013) (The degree to which the new firm may "Chinese wall" the lateral attorney so as to avoid tainting the new firm will be dependent upon the workings of the state adoption of ABA Rule 1.10 or a similar rule.).

65 *See also* Richmond, *Migratory Law Partners*, *supra* note 9, at 418 ("Regarding the lock-out problem, there is similarly no evidence that it exists.")

that factual situation. Rather, by placing the interest of the client in a position superior to the partner's inter-se agreement, the client is afforded the right to dictate the partnership's disposition of the fees it pays. To that end, a client desiring that they receive the particular attention of a particular attorney could insist that the sharing ratio on those fees be altered in that attorney's favor. While it cannot be suggested that this is what the *Thelen* Court intended, this outcome is the logical application of its weighting of interests between the firm and the client.

Last, the question of a property interest in the file is a red herring.[66] While neither the firm nor an attorney thereat may not have an enforceable property interest in the client's file, the firm does have an enforceable property interest in the proceeds of the attorney's work with respect thereto. The *Thelan* Court failed to recognize (or grant any credence to) this distinction. Rather it conflated the absence of an enforceable possessory interest in the file with the lack of a possessory interest in the attorney fees generated therefrom.[67] In joining a firm and undertaking work on a particular file, an attorney commits that those proceeds in the form of attorney fees will be remitted to the firm and shared amongst its partners in accordance with the partnership agreement and, where the partnership agreement is silent, the underlying partnership law.[68]

CONCLUSION

New York is the home of *Meinhard v. Salmon*[69] and its lofty direction that:

> Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.[70]

In re Thelen and *In re Coudert Brothers* constitute an abandonment of this standard, providing in effect that the "punctilio of an honor" does not apply where a third-party to the inter-partner relationship might arguably be impacted thereby. Rather, notwithstanding that the partnership "continues" through dissolution,[71] the New York Court of Appeals has decreed that partners are free to seek to move existing engagements to new firms and uniquely capture for themselves the benefits of work performed for that client, including work that is but a continuation of work pending at the time of the prior firm's dissolution. While those who

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66 *See* Rogers, *supra* note 30.

67 *See also* Debra Cassens Weiss, *Two Duane Morris partners resign after malpractice suit alleges their own LLC collected fees*, ABA JOURNAL (March 31, 2015, 8:14 AM). http://www.abajournal.com/news/article/two_duane_morris_partners_resign_after_malpracticesuit_alleges_their_own_ll (reporting on alleged scheme whereby attorneys directed client to pay fees not to the firm but to an LLC apparently owned by the two attorneys).

68 *See also Ellerby v. Spiezer*, 485 N.E.2d at 416, *supra* note 41.

69 164 N.Y.S.2d 545 (N.Y. 1928).

70 *Id*. at 546 (N.Y. 1928).

71 *See* UNIF. P'SHIP ACT § 30, 6 (pt. II) U.L.A. 354 (2001); N.Y. P'SHIP ACT § 61; TEX. BUS. ORGS. CODE § 152.701(1) (West 2012).

would advance and benefit from a mercenary view of attorneys (a too broadly held view in society generally) may laud the *Thelen* and *Coudart* decisions, it in a sad departure in the law for those who believe inter-partner obligations have enforceable meaning.