

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of December, two thousand and thirteen.

ORDER

In the Matter of: Coudert Brothers LLP

Development Specialists, Inc.,

Plaintiff-Appellee-Cross-Appellant,

K&L Gates LLP, Morrison & Foerster LLP

Defendants-Appellees-Cross-Appellants,

Akin Gump Strauss Hauer & Feld LLP, Arent Fox LLP,
DLA Piper (US) LLP, Dechert LLP, Dorsey & Whitney
LLP, Duane Morris, LLP, Jones Day, Sheppard Mullin
Richter & Hampton, LLP,

Defendants-Appellants-Cross-Appellees.

Docket Nos. 12-4916 (L),
12-4925 (Con), 12-4926 (Con),
12-4928 (Con), 12-4931 (Con),
12-4933 (Con), 12-4935 (Con),
12-4938 (Con), 12-4939 (Con),
12-4945 (Con), 12-4948 (Con),
12-4950 (Con), 12-4952 (Con),
12-4921 (XAP), 12-4927 (XAP),
12-4929 (XAP), 12-4932 (XAP),
12-4934 (XAP), 12-4936 (XAP),
12-4940 (XAP), 12-4942 (XAP),
12-4943 (XAP), 12-4946 (XAP),
12-4949 (XAP), 12-4951 (XAP),
12-4953 (XAP).

By motion dated October 25, 2013, Appellants-Cross-Appellees requested that the panel in *In re: Thelen LLP*, docket no. 12-4138, take judicial notice of briefing submitted in the instant appeal. In the event that the Court certifies the *Thelen* appeal to the New York Court of Appeals, the Appellants-Cross-Appellees also requested that the Court certify the instant appeal to that court. On October 30, 2013, the Court granted the Appellants' motion for judicial notice and for conditional certification.

The following facts are taken from *Development Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP*, 480 B.R. 1145 (S.D.N.Y. 2012). Development Specialists Inc. ("DSI"), as administrator of the bankruptcy estate of the dissolved law firm Coudert Brothers LLP ("Coudert") sued ten law firms—Akin Gump Strauss Hauer & Feld LLP, Arent Fox LLP, Dorsey & Whitney LLP, Duane Morris LLP, Jones Day, K & L Gates LLP, Morrison & Foerster LLP, Sheppard Mullin Richter & Hampton LLP, DLA Piper (US) LLP, and Dechert LLP (together, the "Firms")—seeking to recover profits earned by former Coudert partners earned while completing client matters of Coudert that were pending but uncompleted on the date of its dissolution.

Coudert dissolved on August 16, 2005. A number of Coudert partners still with the Coudert on the date of dissolution were subsequently hired by the Firms. On the date Coudert dissolved, there remained unfinished contracts between Coudert and its clients, and became part

of the “business of the firm” left for Coudert’s executive board to wind down. As former Coudert partners joined other firms, those firms were then retained by Coudert’s former clients to conclude the work left undone (the “Client Matters”). Client Matters were completed by the Firms, almost exclusively on an hourly basis. Coudert filed for protection from its creditors pursuant to Chapter 11 of the Bankruptcy Code in September 2006. DSI brought thirteen separate adversary proceedings against the Firms seeking to recover on behalf of the Coudert estate any profits derived from completing the Client Matters based on the “unfinished business doctrine.”

The district court found the Client Matters were assets of Coudert, finding that “the method by which the Client Matters were billed does not alter the nature of [a law firm's] property interest in them.” 480 B.R. 145, 154 (S.D.N.Y.2012). Another court in the same district reached the opposite conclusion, refusing to recognize a property right in unfinished hourly fee matters. *Geron v. Robinson & Cole LLP*, 476 B.R. 732,740 (S.D.N.Y. 2012) (“*In re Thelen*”). Both cases were appealed to this Court, and a separate panel of this Court heard argument in *In re Thelen* on October 7, 2013.

In an opinion dated November 15, 2013, the Court in *Thelen* certified the following questions to the New York Court of Appeals pursuant to Second Circuit Local Rule 27.2 and New York Compilation of Codes, Rules, and Regulations, title 22, section 500.27(a):

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?

If so, how does New York law define a “client matter” for purposes of the unfinished business doctrine and what proportion of the profit derived from an ongoing hourly matter may the new law firm retain?

For the reasons set forth in the *Thelen* opinion, it is ORDERED that the two questions referenced above are hereby certified to the New York Court of Appeals with respect to the instant appeal. The Clerk of Court is directed to transmit to the Clerk of the New York Court of Appeals a certificate in the form attached, together with a copy of this order and a complete set of the briefs, appendices, and record filed by the parties in this Court. It is further ORDERED that the parties bear equally any fees and costs that may be imposed by the New York Court of Appeals.

For the Court:

Catherine O’Hagan Wolfe,
Clerk of Court

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

 

 