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■ THE COURTS

If You Can't Beat 'Em in Court — Hire 'Em

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If you can't beat 'em, hire 'em.

Just two months after Ernst & Young LLP was ordered to pay \$71.2 million to a Pikesville law firm that represented its adversary, the multi-national accounting firm turned around and hired that same law firm to represent it in a \$185 million indemnity suit.

Ernst & Young yesterday filed suit in Baltimore City Circuit against Swidler Berlin Shereff Freidman LLP, Swidler & Berlin Chartered and Swidler managing partner Roger L. Frankel — the accounting firm's former legal teammates in the bankruptcy case of fashion retailer Merry-Go-Round.

Representing Ernst & Young now is the firm of Snyder, Weiner, Weltchek &

Vogelstein, which won a \$185 million malpractice lawsuit filed against Ernst & Young on behalf of Merry-Go-Round.

The indemnity suit revolves around Swidler's alleged actions during the time leading to Merry-Go-Round's financial demise. Swidler, Merry-Go-Round's counsel during the bankruptcy proceedings, urged Merry-Go-Round to hire Ernst & Young at a time when the law firm allegedly had a professional relationship with the accounting firm.

During the proceedings, the law firm allegedly hid its relationship with the accounting firm from both companies.

Lawrence S. Parnell, Ernst & Young public relations director, acknowledged that, on the face of things, it might appear strange that neither Merry-Go-Round nor its Ernst & Young financial advisory associates knew of Swidler's connection with each of them.

"Some 85,000 [people] work for Ernst & Young in many divisions of the firm doing many different things," Parnell said. "Paperwork prepared that said there was no conflict was signed by Swidler."

Ernst & Young's three-count complaint alleges that Swidler's motivation for inducing Merry-Go-Round to hire it was "to use that hiring and retention as a vehicle for encouraging [Ernst & Young] to expand its dependence upon [Swidler] as attorney for [Ernst & Young] in substantial and significant matters . . . to obtain for itself millions of dollars in fees from [Ernst & Young]," and that in doing so, the law firm "threw all caution to the wind and fraudulently concealed its ongoing relationship with [Ernst & Young]."

Was it ironic that Ernst & Young ended up hiring Snyder, Weiner? Parnell, who admitted the company seldom used plaintiffs' attorneys, added, "They know the most about the case and they are highly capable and skilled attorneys."

Snyder, Weiner partner Arnold M. Weiner said he was pleased his firm's former adversary has become a client.

"We're proud Ernst & Young has entrusted this significant case to us, and we look forward to the proceedings as they will unfold," he said.

Neither Swidler & Berlin nor Frankel returned calls for comment.

Former Merry-Go-Round Chapter 7 trustee Deborah H. Devan said yesterday that Snyder, Weiner partner Stephen L. Snyder told her his firm was filing suit against Swidler on Ernst & Young's behalf, but she declined further comment.

When Merry-Go-Round filed for Chapter 11 bankruptcy in January 1994, the clothing chain operated approximately 1,450 stores in 44 states and the District of Columbia, employed about 20,000 people

and had \$1 billion in revenues and \$100 million in cash reserves.

Over the next two years, Swidler and Ernst & Young's Restructuring and Reorganization Group provided professional advice and assistance while Merry-Go-Round went through Chapter 11 proceedings.

During that period, the chain was reduced to a \$25 million cash account with \$300 million in creditor claims against it. Merry-Go-Round failed to reorganize itself and Swidler billed it "approximately \$4.5 million in fees and expenses, while . . . [Ernst & Young] became one of Swidler's most significant clients," according to the accounting firm's complaint.

In March 1996, the U.S. Bankruptcy Court converted the case to Chapter 7 and appointed Devan trustee to liquidate Merry-Go-Round and pay off its estimated 9,000 creditors.

Devan filed suit against Ernst & Young in Baltimore City Circuit Court in December 1997, charging the accounting giant with fraud and malpractice that caused Merry-Go-Round to fail. She hired Snyder, Weiner to litigate case.

In April 1999, Baltimore City Circuit Judge Kathleen O'Farrell Friedman approved a \$185 million settlement — won by Snyder, Weiner from Ernst & Young — to be paid into the Merry-Go-Round bankruptcy estate. U.S. Bankruptcy Court Judge E. Stephen Derby approved the settlement in June.

The \$71.2 million contingency fee that Derby awarded the law firm in January was the amount originally sought in the suit against Ernst & Young — 40 percent of the \$185 million settlement against the accounting firm over allegations that its bad advice sank the fashion clothing chain.

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