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## Business

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# Malpractice Loss Squeezes Coudert's Liquidation

By Don J. DeBenedictis  
Daily Journal Staff Writer

**S**ANTA ANA — A Los Angeles jury has found the defunct international law firm Coudert Brothers committed malpractice and must pay a real estate investor more than \$2.5 million, including \$1.5 million in punitive damages.

Los Angeles Superior Court Judge Rolf M. Treu entered a judgment May 9, ordering Coudert and former real estate partner Ralph Navarro to pay Darryl Wong and one of his companies \$1.06 million in compensatory damages and ordering the firm alone to pay the punitive award. *Lyman Gardens Apartments v. Coudert Brothers*, BC 299990 (L.A. Super. Ct., filed July 31, 2003).

The judgment raises the issue of how to collect damages from a law firm now in liquidation. Testimony during the punitive-damages phase of the trial offered a glimpse of the current finances of the firm, a 152-year-old pioneer in international practice that had 550 lawyers at its peak but announced its closing on Aug. 18, 2005.

San Francisco malpractice expert Ronald Mallen said the firm's former partners probably will not have to pay any of the punitive damages because Coudert was a limited-liability partnership.

Coudert's executive director, Pat Kane, testified the firm only has about \$85,000 in its bank accounts in the United States and owes millions on secured bank loans and eight office leases around the world.

But the lead plaintiffs' attorney, Ronald Rus of Irvine's Rus, Miliband & Smith, said evidence showed Coudert Brothers still has millions in foreign bank accounts and accounts receivables.

"They are still showing a net worth of many millions of dollars," Rus said.

The malpractice suit alleged Navarro, a contract partner at Coudert and the Los Angeles office's only real estate lawyer, botched the sale of Wong's Lyman Gardens Apartments complex in 2002 by failing to follow federal statutes requiring disclosure of possible lead-based paint on the pre-1978 buildings, according to Rus. The disclosures are mandatory, and the statute demands treble damages for failure to comply.

When the buyer demanded money to pay for cleaning up the paint, Coudert Brothers investigated the law and discovered its mistake. But rather than tell its client, the firm engaged in a cover-up, Rus and partner Randall Smith charged during the trial.

"They made up a whole variety of reasons why they didn't have to tell their client," Rus said. On the other hand, "had they fessed up to that mistake, they could have settled [with the apartment buyer] for \$300,000."

Wong ended up paying the buyer \$975,000 over the paint issue before he filed the malpractice suit.

Navarro, now with Backus Bland Navarro & Weber in Los Angeles, did not return a telephone call seeking comment on the verdict.

Coudert Brothers' lead attorney, Lawrence N. Halperin of Lewis, Brisbois, Bisgard & Smith in Los Angeles, was out of town and could not be reached. His co-counsel at Lewis Brisbois, Kenneth D. Watnick, did not return telephone calls about the case.

Coudert Brothers' former managing partner in Los Angeles, Glenn W. Trost, now of White &

Case, did not return a telephone call. Trost was a witness in the case. The firm's chairman, David Huebner, now with Sheppard, Mullin, Richter & Hampton in Los Angeles, also did not return a telephone call.

Navarro's trial counsel, Dennis A. Winston of Moskowitz, Brestoff, Winston & Blinderman in

their malpractice on their clients.

But what actually upset the jury, he said, was that Coudert investigated Navarro's mistake and produced an internal memo describing how and why their client, Wong, was liable for not disclosing the lead paint to the buyer. However, the firm neither told Wong about his liability nor

director to wind down the firm, said Coudert owes banks about \$2 million in secured loans and owes landlords from \$3.3 million in Los Angeles to \$25 million in Sydney, Australia. She said the firm is in litigation with landlords in San Francisco and Palo Alto and with international banks that have frozen its funds.

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**Mark T. Dooks,**  
Law-firm dispute specialist

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Century City, said the defendants will ask Treu for a judgment notwithstanding the verdict and a new trial. Winston said he does not know yet whether they will appeal.

Navarro and Coudert's main defense was their claim that their client, Wong, knew about the lead-based paint in the apartments and actively concealed that fact from Navarro and the buyers in order to get a higher price for the property. Winston said Treu prevented the jury from hearing "a substantial amount of evidence" on that issue.

Navarro freely admitted in the malpractice litigation that he failed to comply with the federal disclosure laws. But Winston said that failure "didn't cause [the buyers] any damage."

What did damage them, he said, was Wong's concealing the lead-based paint. If evidence about that had come in, Winston said, "I believe the verdict would've come out the other way."

Rus countered that the law is clear that attorneys can't blame

acknowledged that the firm had a conflict of interest in continuing to represent him.

When Wong retained new attorneys, Coudert did not include the memo in the file it sent over. The memo only came out in discovery in the malpractice suit, and only because Coudert cross-complained for its legal fees for preparing it, Rus said.

After a seven-day trial and an hour of deliberations, the jury on April 28 found Navarro and the firm liable for malpractice, breach of fiduciary duty and fraudulent concealment.

The jury set the punitive-damages amount after more testimony and another hour of deliberations on May 5. Rus and Winston said jurors indicated they did not hit Navarro with punitive damages because they believed he had suffered enough.

Part of Coudert's defense during the punitive-damages phase of trial is that the former firm is effectively broke, Rus said.

In her testimony May 5, Kane, who continues to be executive

Kane said the firm is owed about \$24 million in accounts receivables, of which she hopes to collect between 30 percent and 40 percent.

But on cross-examination, she told Rus the firm has more than \$2 million in foreign bank accounts including about \$900,000 in Frankfurt, Germany. She said \$16.4 million was distributed to partners last year when the firm dissolved.

Partners' capital investment in the firm stood at \$22.3 million at the end of March 2006, Kane testified.

Mallen said the law firm's status as a limited-liability partnership generally should protect its former partners from paying any of the punitive-damages award, which would not be covered by insurance.

Rus said he believes he can collect the award, either from Coudert's assets or from partners. He said he could argue that payments to reduce the secured bank debts were preferential payments or even fraudulent conveyances.

Mark T. Dooks, a law-firm dispute specialist at Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg in Century City, said there are many creative ways to try to reach partner assets in a situation like this.

"The fact that the firm is in liquidation is certainly going to complicate the plaintiffs' task," Dooks said.