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## LETTERS

*To the Editor*

### Partnership Battles Could Get Worse

The article by Roy Reardon and Mary Elizabeth McGarry in the Court of Appeals Roundup column (June 6) regarding the decision in *Bailey v. Fish & Neave* (June 6) misstated the facts of the case. *Bailey* concerned an amendment to a law firm partnership agreement, passed after the appellants had given notice of departure, which cancelled their rights under the partnership agreement to their share of receivables collected after they left. Mr. Reardon represented respondents; I represented the appellants.

The article stated that the appellants had “received payments based upon the amendment provision” but had “thereafter” sued. The article implied that appellants had ratified the amendment by accepting payments. That is not true. No appellant has received a penny of his post-departure compensation. The younger of appellants will not receive the first payment until 2019, when he will effectively receive only 3 percent of his previously-vested earnings.

The Court of Appeals said that the amendment was proper by mere majority vote, because the agreement committed all questions about “the partnership” to majority vote. If that had in fact been the language of the partnership agreement, the case never would have occurred. In fact, the Court had granted leave to appeal the question whether language copied from the partnership statute regarding “the partnership business” permitted amendment

without an actual amendment clause, and the appellants showed without contradiction that the statute distinguished between votes about “the partnership business” and votes about “the agreement between the partners,” and even assigned different default values to each, which is dispositive of them being different things.

Reading Judge Theodore Jones’ decision, you would never know that the distinction had been raised, nor that the prior 31 amendments to this firm’s agreement had been done only by unanimous consent, which is the only way a partnership agreement with no amendment clause can be changed. By construing language about “the business” to include amendment of the partnership agreement itself, the Court effectively converted clauses about “the business” in thousands of partnership agreements into de facto amendment clauses, with predictable results on the rights of minority or departing partners. The world of law firm partnerships was ugly before this decision, but it will only get worse after it.

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