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CITY SEEKS RETRIAL IN AUDITOR'S ROLE IN OLD REPUBLIC CASE

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Like an echo from Enron and its accounting irregularities, powerhouse auditor PricewaterhouseCoopers has been accused by the San Francisco city attorney's office of concealing the fraud of its client Old Republic Title Co.

Deputy City Attorney David Newdorf told the First District Court of Appeal that the accounting firm, referred to as PwC, failed to report to state authorities that Old Republic was keeping unclaimed escrow funds and inflating its profits.

"For many years PwC knew that Old Republic had been sweeping millions of trust dollars into company income," Newdorf wrote in a brief filed Dec. 16. "PwC knew that Old Republic should have escheated these millions to the state of California under laws designed to protect owners of unclaimed property."

In *State of California v. Old Republic Title Co.*, A095918, the city attorney accused PwC of unfair business practices under Business & Professions Code §17200 and also of violating California's false claims act, Government Code §12651.

Joel Sanders, PwC's attorney, said both allegations already have been dismissed at the trial court level. He will ask the appellate panel to deny the city's request to pursue claims against his client at a new trial.

The Gibson, Dunn & Crutcher partner said his response to the city's allegations was not due until March. In the meantime he referred to rulings in the case by former San Francisco Superior Court Judge Stuart Pollak and his own trial court papers.

"There is no merit to the city's claim

allegations against PwC. In a transcript of the October 2000 proceedings, the judge said there was no cause of action.

"I'm not quite sure where the unfair competition is," the judge said. "I don't know where this would give rise to the harm to consumers."

In a companion ruling issued in May 2001, the judge sustained Sanders' demurrer to the false claims allegation, in effect saying no harm, no foul.

"The court certainly does not want to be understood as condoning or approving the submission of false audit

reports," Pollack said, according to the transcript of the proceedings. "It's a serious matter. But it does seem to me that looking at this, one has to reach the conclusion that even if that's what occurred here, it didn't make any difference."

The issues that are now before the appellate court first arose when the city attorney and district attorney of San Francisco, acting as whistle-blowers on behalf of the state in a class action, accused Old Republic of failing to pay the state dormant funds in escrow accounts.

After three years of litigation, in June 2001, Pollak ruled that Old Republic

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against PwC," Sanders said in an interview. "The city's arguments were carefully considered and rejected by Judge Pollak when he dismissed the case as to PwC. We expect the court of appeal will affirm Judge Pollak's decision."

Pollak, who has since been elevated to the First District Court of Appeal, had granted summary judgment knocking out the unfair business

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violated the false claims act and ordered it to pay the state and class members \$32.8 million, including interest, for its retention of the unclaimed money that should have been reported and refunded.

Old Republic has appealed that decision, while the city attorney has cross-appealed, saying the amount the title company should repay is higher than what Pollak ordered.

In the separate issue involving PwC, city lawyers want a new trial - and another chance - to pursue their claims that the accounting firm issued "opinion letters" between 1989 and 1998 that gave Old Republic a clean bill of health on its financial statements.

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In an interview, he compared PwC's alleged actions to Arthur Andersen, which allowed Enron to inflate its earnings. He claims such big accounting firms "permit large fees to compromise the integrity of their work."

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He said the city seeks unspecified civil penalties, attorneys fees and disgorgement of the fees PwC made from handling Old Republic's accounting work over a 10-year period.

The city also contends that PwC was wrong to argue that the state controller has exclusive authority to enforce escheat laws. The city asserted that the Department of Insurance, to which PwC submitted its alleged false opinion letters, also has the power to enforce escheat laws.

But Sanders told the court that the city was wrong in saying the insurance agency had authority to enforce escheat laws.

"Critically, the city cannot allege that the Department of Insurance, rather than the controller, was responsible for escheat compliance or that the department was the agency to which Old Republic owed an escheat responsibility," PwC's Sanders argued in his demurrer.

Pollak agreed with Sanders and ruled that PwC's opinion letters were immaterial as a matter of law.

Newdorf wrote that Pollak's ruling appeared to immunize auditors who help hide their clients' fraud from state agencies.

"The logical result of the trial court's reasoning is that auditors may conceal matters from a state agency with impunity on the fortuity of past lax enforcement," he added.

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