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**THE RODENT:  
LAWYERS'  
NIGHTMARES  
ARE SET IN  
A TWISTED  
VERSION OF  
REALITY**  
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**DAILY BUSINESS REVIEW**

**LITIGATION** Dyadic sees silver lining in panel findings

## Law firms still in company's sights

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Dyadic International Inc. lost its \$500 million lawsuit against Ernst & Young, but in the process it may have gotten help in pursuing Greenberg Traurig and other law firms it claims nearly destroyed the company.

Jupiter-based Dyadic, a biotechnology company that once traded on the AMEX, has been targeting Greenberg for malpractice damages since 2009.

The lawsuit alleges misguidance and misconduct by Dyadic's outside legal and accounting firms during the acquisition of a Chinese company and the move to make Dyadic a publicly traded company.

Dyadic got news Nov. 28 that it was losing its arbitration with Ernst & Young. The final award by the Conflict Prevention and Resolution panel came Feb. 29, and Palm Beach Circuit Judge Glenn Kelley approved it July 3.

"The time for appeal has expired," said Gunster partner Robert Hackleman, the attorney who defended Ernst & Young.

The arbitration tribunal did not al-

low either side to collect attorney fees or costs from the other party, Hackleman added.

After Kelley's approval of the "take nothing" award, Dyadic attorney Steven M. Katzman of Katzman, Wasserman, Bernardini & Rubinstein in Boca Raton filed an amended complaint against the same law firms July 18.

The defendants are Greenberg Traurig, Greenberg shareholder Robert I. Schwimmer in Chicago and two Miami law firms — Moscowitz & Moscowitz and Bilzin, Sumberg, Baena, Price & Axelrod. All three deny wrongdoing and vow to fight Dyadic's claims.

Through much of the period in question, Greenberg was outside general counsel, securities counsel and at one critical juncture special counsel in an investigation into alleged corruption at Dyadic holdings.

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Hackleman



Read the arbitration report on  
**DailyBusinessReview.com**



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## DYADIC: Company hopes findings will aid case against law firms

The Moscowwitz firm was hired to conduct an independent corruption investigation, but Dyadic alleges the probe was biased and incomplete.

While the arbitrators exonerated E&Y, their split decision put some blame on the law firms.

"There is going to be a fight over whether the decision by the panel comes into evidence," Katzman said. "Irrespective of whether the decision comes into evidence, the information we learned through arbitration will certainly be used by us in the trial, and it is our hope that the conclusions reached by the panel will also be reached by a jury."

### GOING PUBLIC

According to court records, Dyadic's troubles began in 2004 after the company was simultaneously going public and acquiring Hong Kong-based Puridet, with a factory in China.

Puridet turned out to be rife with corruption. Its management was using shell companies to engage in tax fraud, kickbacks and product theft, according to Dyadic's original complaint.

Dyadic alleged Ernst & Young and its outside general counsel should have discovered the fraud, should not have been giving Dyadic a clean bill of health on annual audits and should have advised Dyadic not to structure itself as a public company that included emerging market subsidiaries.

Schwimmer, a partner with Jenkins & Gilchrist in Chicago, was Dyadic's general counsel. Burdened with tax scheme-related malpractice suits, Jenkins ceased to exist in 2007. Schwimmer left in 2005 to join Greenberg.

E&Y and the law firms crafted Dyadic's transition to a publicly traded company with Asian subsidiaries out of self-interest as a way of collecting higher fees, Dyadic claimed.

However, Dyadic's own complaint, as the arbitration tribunal pointed out, illustrated a series of poor decisions that shifted the blame away from E&Y and toward Dyadic's officers and outside counsel.

In 2007, Dyadic founder and CEO Mark Emalfarb received anonymous whistle-blower emails alleging rampant corruption in Asia. He forwarded them to then-chief financial officer Joel Wayne Moor.



Emalfarb

Hired in 2005 for his expertise in running a public company, Moor came in on the recommendations of E&Y and Schwimmer. Dyadic alleged Moor "incorrectly suggested wrongdoing by Emalfarb," Dyadic accused E&Y and Greenberg of "circling the wagons" to prevent their own errors coming to light, and they encouraged Moor to target Emalfarb.

### QUESTIONABLE ADVICE

Also on the advice of Greenberg, the Dyadic board on April 23, 2007, made a series of decisions described as a "self-destructive path" by the tribunal.

"Dyadic's rash and unorthodox decision ... to issue a press release declaring its financial statements unreliable, to halt public trading, or to place Mark Emalfarb on a leave of absence ... were taken without E&Y's prior knowledge or consultation and appear to have stemmed from the intervention of questionable internal and external advice from other quarters," the tribunal stated in the final award.

After Emalfarb's departure, Schwimmer was instrumental in recommending Moor be promoted to interim CEO, Dyadic claimed.

Throughout the investigation, steps were taken to limit E&Y's role, the panel noted. For years, E&Y advised Dyadic that it should undertake a forensic audit to clear up once and for all any concerns about corruption in the Asian operation. It was never done.

"Moor claimed, without citing evidence, that the costs of a forensic audit would be too expensive, that relevant records were lost or destroyed and that potential dangers of conducting an investigation in China were insurmountable," the tribunal said. "Nonetheless,

after his own review of Puridet records, (Moor) somehow reached his own conclusions about the accuracy of the whistle-blower allegations."

The tribunal noted any records coming from China to Moor would have required the involvement of E&Y's Beijing office, but it was never contacted.

Moscowitz & Moscowwitz, a Miami husband-and-wife law firm of former federal prosecutors, was hired by the board to perform an independent investigation, with Schwimmer as Dyadic's special counsel.

The arbitration panel found E&Y assumed the Moscowwitz investigation would include a forensic audit.

"The Moscowwitzes hired an accounting firm to answer forensic-type questions, but this was far from a forensic audit," the tribunal said.

The Moscowwitz report, which was substantially restricted in scope, did little more than conclude Emalfarb knew of the alleged schemes of Hong Kong-based Puridet and did nothing about it.

Moscowitz attorney Steven Safra at Cole, Scott & Kissane in Miami, said: "We are vigorously defending the case and believe we are entitled to judgment as a matter of law. We believe we will prevail both legally and factually."

### AUDIT PARAMETERS

"As a result of Greenberg's status as special counsel to Dyadic and E&Y's negotiated exclusion from the independent investigation and its resulting report, Greenberg, Schwimmer and E&Y were not only able to insulate themselves from being identified as a responsible party by Moscowwitz, but also protected themselves from being the target of any potential actions against responsible parties as subsequently recommended by Bilzin," Dyadic alleged.

While the Moscowwitz firm was concluding its investigation, Emalfarb was raising conflict-of-interest issues against Greenberg that eventually forced its exit. But Greenberg hand-picked its successor, the Bilzin firm.

Bilzin took the Moscowwitz report

and recommended Emalfarb be permanently terminated, ignoring the board's request that Bilzin advise them on the pros and cons of severing ties with the company founder and its key means of generating sales, Dyadic said.

And as securities counsel, Bilzin's efforts to preserve the company's stock trading was too little, too late while billing \$3.6 million, Dyadic said.

Bilzin's counsel, Harley Tropin of Kozyak Tropin & Throckmorton in Coral Gables, said, "We shouldn't have been named in this lawsuit, and we intend to defend it vigorously."

Kelley on Wednesday granted Greenberg an extension to respond to Dyadic's amended complaint.

Dyadic's remaining argument in arbitration was that E&Y should have caught the fraud during the course of its regular audits.

However, the tribunal emphasized that "a regular audit is not designed to catch fraud or management collusion and concealment."

In fact, Dyadic management made catching fraud all the more difficult by not approving a forensic audit and by making their own self-serving statements, the arbitration panel found.

"Each year, Dyadic principals continued to sign management representation letters with similar language: 'Transactions with related parties ... and related amounts receivable ... have been properly recorded or disclosed in the financial statements.'"

In June 2008, a new slate of directors was elected, and Emalfarb returned to Dyadic as CEO. But the once up-and-coming tech firm was relegated to trading as a penny stock on the OTC Markets Group.

"Dyadic suffered tremendous damage when it was delisted," Katzman said. "It lost \$160 million in market capital. It lost tremendous business opportunities and license fees that were all deep into negotiations."