

## **SNELL & WILMER OBTAINS DEFENSE VERDICT FOR CHERRY CRICKET RESTAURANT**

**DENVER (Aug. 9, 2010)** – Snell & Wilmer L.L.P. litigators Michael Lindsay, James Kilroy and Neil Peck recently obtained a defense verdict for Cherry Cricket Land II, a subsidiary of the iconic Denver restaurant, The Cherry Cricket. As a result of this decision, which came after an eight-day trial to Denver District Court, the popular Cherry Cricket restaurant can continue to operate in its current, expanded space without paying any damages.

The complex real estate case focused on jointly purchased property belonging to Clayton Street Partners, LLC, a group of local businesses formed solely to acquire the aforementioned property and condominiumize it. After the original purchase, members of Clayton Street Partners formed Covenants, Conditions and Restrictions (CCRs) as part of this condominiumization, which gave each member the right of first refusal in the event that an owner decided to sell its unit, unless the owner sold to a “related entity.” Cherry Creek Land, LLC, one of the group members, purchased the adjacent property of another member (Dreamland Properties, LLC, operating the Fast Frame store), so that The Cherry Cricket could expand its space and serve more customers. Cherry Creek Land, LLC, was able to purchase this property by creating a separate, but related, entity named Cherry Cricket Land II to work directly with Dreamland Properties, LLC in acquiring the former Fast Frame property.

The plaintiffs, two members of Clayton Street Partners, filed a lawsuit for declaratory judgment, breach of contract and tortious interference against Cherry Cricket Land II.

After trial, the court concluded that the plain language of the CCRs did not provide a right of first refusal in the case of a sale to a “related entity” of any owner, and this was such a case. Alternatively, the plaintiffs had failed to preserve any right of first refusal because they did not take the required steps for exercise. Finally, the court decided that plaintiffs were primarily seeking specific performance, and that they had demonstrated neither an ability to buy the property in question, nor that they were deserving of such equitable relief when they did not to try to enjoin the sale in the first place.

“This outcome is the result of a skilled and dedicated trial team. We are very pleased and proud of our Denver partners and associates,” stated Tim O’Neill, Administrative Partner of the Snell & Wilmer Denver office. In addition to Mike Lindsay, Neil Peck, Jim Kilroy and Jessica Yates, other members of the legal team included paralegal Donna Munyer, paralegal assistant Stephanie Schlote, and legal secretaries Matti McCleery and Linda Ralph. O’Neill adds, “This was a complicated and difficult effort and the team is very pleased with their success in maintaining a locale that has become fondly thought of by the Denver community.”

### **About Snell & Wilmer L.L.P.**

Founded in 1938, Snell & Wilmer is a full-service business law firm with more than 400 attorneys practicing in nine locations throughout the western United States and in Mexico: Denver; Phoenix and Tucson, Arizona; Los Angeles and Orange County, California; Las Vegas and Reno, Nevada; Salt Lake City, Utah; and Los Cabos, Mexico. The firm represents clients ranging from large, publicly-traded corporations to small businesses, individuals, and entrepreneurs. For more information, visit [www.swlaw.com](http://www.swlaw.com).