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Howrey Trustee Strikes \$1.5M Deal With 31 Ex-Partners

By **Andrew Scurria**

Law360, New York (September 22, 2014, 5:31 PM ET) -- A group of former Howrey LLP equity partners have agreed to pay the firm's Chapter 11 trustee nearly \$1.5 million, marking the second major deal on clawback claims in the bankruptcy and bringing the Howrey estate closer to offering up a liquidation plan.

Unveiled in court filings Friday, the aggregate settlement sum represents 16 percent of what trustee Allen B. Diamond had sought from 31 former partners over compensation paid out in the three years before Howrey's 2011 collapse. The recovery rate is virtually identical to that paid by 60 partners who agreed in the spring to resolve the trustee's claims for \$4.2 million, a **milestone deal** that was expected to yield additional settlements with the remaining defendants.

The "vast majority" of the trustee's claims against Howrey's partners are now resolved, save for a small number of holdouts who are still litigating and a batch of attorneys now with Jones Day who haven't been sued yet, according to a person familiar with the matter. Negotiations with the Jones Day group are ongoing, the person said.

Howrey's unsecured creditors are also pursuing a few partners that the trustee's counsel at Diamond McCarthy LLP couldn't because of conflicts of interest. The clawback claims arise from equity draws, capital returns or other profit distributions that partners took home while Howrey was still operating but allegedly insolvent.

Howrey was unable to pay its debts "at least during 2011 and as far back as mid-to-late 2010" and was undercapitalized even earlier that year, according to the trustee.

The firm was once one of the nation's top antitrust and intellectual property law firms, employing more than 750 attorneys in 17 offices across the U.S., Europe and Asia. Its downfall began in 2009, as declining profits caused much of the firm's top talent to jump ship.

"Although the trustee is confident that the estate would prevail in litigating the clawback claims, full-blown litigation with 31 partners would be costly to the estate, with no ultimate guarantee of success of recovering an amount in excess of what is received," the settlement motion said.

The \$1.5 million sum is reasonable, the trustee added, because many partners got less in compensation from the two years before Howrey's collapse than they anticipated. Some partners had financed their capital contributions on credit, and others had to inject additional money into their new firms, which would make it harder to collect on any judgment, according to the trustee.

The trustee also asserted breach of contract claims based on a provision in Howrey's partnership that obligated departing partners to return equity draws that exceeded his or her share of actual cash basis profits.

Creditors placed Howrey into an involuntary Chapter 7 proceeding in April 2011. The firm had begun to wind down operations the previous month, and by June of that year it had converted the case into a voluntary Chapter 11.

In addition to targeting former partners, the trustee has suits pending against eight BigLaw shops over profits they earned on client work brought by partners who decamped from Howrey. Judge Montali **declined this month to dismiss those unfinished-business claims** arising from partners who left both before and after Howrey's dissolution, a break from the New York Court of Appeals' July ruling in the Thelen LLP and Coudert Brothers LLP bankruptcies.

The larger, 60-partner deal won approval from U.S. Bankruptcy Judge Dennis Montali in June and became final last month when unsecured creditors dropped an appeal claiming it was too low.

Judge Montali has never been presented with a liquidation plan for Howrey, which would require the firm to pay all its administrative and other bankruptcy claims at the time of confirmation.

That can't happen until the estate can reduce the administrative claims against it or bring in more money through settlements, according to the person close to the matter.

The trustee is represented by Howard D. Ressler, Stephen T. Loden, Jason M. Rudd and Andrew B. Ryan of Diamond McCarthy LLP and Eric Nyberg of Kornfield Nyberg Bender & Kuhner PC.

Howrey's unsecured creditors are represented by Bradford F. Englander, John F. Carlton and Justin P. Fasano of Whiteford Taylor & Preston LLP.

The case is In re: Howrey LLP, case number 3:11-bk-31376, in the U.S. Bankruptcy Court for the Northern District of California.

--Editing by Chris Yates.

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