

# Howrey Trustee, Akin Gump Standoff Over Question of Attorney-Client Privilege

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*The Am Law Daily* What becomes of attorney-client privilege when the client ceases to exist?

The question is at the heart of a standoff between Howreybankruptcy trustee Allan Diamond and Akin Gump Strauss Hauer & Feld over whether the firm must turn over files related to work it did analyzing claims Howrey was considering pursuing against at least one of the defunct firm's vendors.

Akin Gump—which was hired by the Howrey dissolution committee before the firm became bankrupt—claims that legal ethics prohibit it from relinquishing the disputed files to anyone other than its client in the matter. Diamond argues that he has essentially taken over for the since-dissolved dissolution committee and is therefore entitled to the files.

The unusual squabble came to light in a Wednesday court filing in which Diamond urges the court to force Akin Gump to produce the files. The contracts reviewed by the firm in the course of its engagement, Diamond says in the filing, have subsequently “been the subject of analysis by the Trustee for many months.”

While the Wednesday filing does not identify the vendor or contracts at issue, a source familiar with Akin Gump's work for Howrey who requested anonymity says the firm was hired to investigate potential claims against software giant SAP. Beginning in 2004, the company developed a customized billing and accounts payable system for Howrey that took five years—and considerable effort—to complete and install. (Howrey officially voted to dissolve in March 2011 following months of high-profile partner losses and was pushed into bankruptcy in San Francisco a month later.)

Diamond's colleague Jason Rudd told sibling publication *Law Technology News* earlier this year that Howrey's use of SAP “may be subject to dispute later.” Rudd, who did not elaborate, made the comment in the context of *LTN's* coverage of the complex process Howrey used to wind down its information technology in the wake of its collapse. The publication noted that Howrey was among the first law firms to tap SAP for software services. Rudd and Diamond, both of whom are partners at Diamond McCarthy in Texas, could not be reached for comment Thursday. An SAP spokesman had no comment.

According to the source familiar with the matter, Akin Gump's investigation into possible claims against SAP was disrupted when Diamond entered the case in October 2011. The trustee and the firm have been at loggerheads over who the files belong to ever since.

Diamond's frustration over the impasse is evident in Wednesday's filing, which says that, “Despite repeated attempts, Akin Gump has not turned over the client files as of the date of this motion.”

In exhibits attached to the filing, Akin Gump claims both that it has not been paid for its services and that because it was retained by the dissolution committee, ethical rules “obligate us not to disclose privileged information to the Trustee.”

Diamond argues that U.S. Supreme Court precedent has established that a bankruptcy trustee is the “successor-in-interest” to a bankrupt entity, and therefore inherits any attorney-client privilege. Diamond also asserts that the Howrey estate “is not required to satisfy any outstanding amounts owed to Akin Gump by Howrey as a condition to turning over the files.” (So far, Akin Gump has not appeared as a creditor in the bankruptcy).

Diamond is seeking the return of any documents Howrey initially gave Akin Gump, as well as any communication between the dissolution committee and Akin Gump related to the assignment. Akin Gump partner James Wetwiska in Houston, who, court filings show, led the firm's efforts on the matter, did not return a request for comment. An Akin Gump spokesman said the firm does not comment on pending litigation matters involving the firm. In other Howrey bankruptcy-related news, Diamond recently updated U.S. bankruptcy court judge Dennis Montali on the status of the case. Among the achievements he touted: assessing contingency fee

matters that could contribute money to the estate; streamlining the roster of legal, accounting, and collections counsel used; reducing payroll costs by 84 percent; recovering \$5 million in unpaid bills; and gathering “voluminous data” related to potential claims against third parties.

And, as was noted elsewhere last month, there is the question of the potential impact of a fatal accident that occurred at a storage facility where Howrey kept some of its files. The collapse of a roof at the Maryland site means 60,000 boxes of documents belonging to Howrey (out of 220,000 boxes total stored around the world) may never be recovered. Regardless of the accident, Diamond said in an August status report that 850 former clients have asked that Howrey dispose of their files, while 500 have asked that their files be returned.

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