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Howrey Trustee Adds Firms to Clawback List

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SAN FRANCISCO — The Howrey estate was by turns peaceable and litigious Friday, striking a multimillion-dollar settlement with one of its insurance carriers while rounding up more firms for clawback claims.

The bankrupt firm's trustee targeted seven law firms in its second round of unfinished business suits seeking to recover revenue earned from work exiting Howrey partners took to their new firms. Trustee Allan Diamond vowed earlier this year to sue any of the 71 firms that hired former Howrey partners after its 2011 collapse if they did not settle. Haynes and Boone; Neal, Gerber & Eisenberg; Kasowitz Benson Torres & Friedman; Hunton & Williams; Venable; Sheppard Mullin Richter & Hampton; and Levenfeld Pearlstein were slapped with suits this time. Diamond could not be reached for comment.

The same day the suits were filed, Diamond sought court approval for a settlement with the Attorneys Liability Assurance Society, which provided malpractice insurance to the defunct firm. The parties, which began negotiations in September 2012, struck a deal that will send up to \$7.6 million to Howrey, depending on the outcome of malpractice actions pending against the estate, according to court papers.

"Litigating against ALAS would be complex, expensive and inconvenient — especially to the extent it would distract the estate from its unfinished business and clawback claims," attorneys for the estate wrote in court papers.

The Howrey estate is counting on those claims to help pay creditors. Diamond [hopes to recover \\$100 million](#) from former partners paid when the firm was probably insolvent, and another \$100 million from firms that took business from exiting partners, he told *Recorder* sibling publication *The Am Law Daily* in an interview earlier this year.

Diamond filed his [first wave of suits](#) against a half-dozen firms in March, zeroing in on Dorsey & Whitney; Kilpatrick Townsend & Stockton; Ropes & Gray; and Shearman & Sterling, among others. Seven former Howrey partners at five of those firms were also sued for money they were allegedly paid while the firm was insolvent. Rather than put up a fight, Fenwick & West and Holland & Knight agreed in late March to pay

\$15,000 and \$26,197, respectively, for work inherited from former Howrey partners.

The clawback claims hinge on the so-called *Jewel* doctrine, a controversial precedent that has become a trusty source of recovery for defunct firms. Howrey partners tried to ward off those claims with *Jewel* waivers in the firm's last days. Attorneys for the estate denounced those agreements as "a textbook fraudulent transfer," echoing previous statements by U.S. Bankruptcy Judge Dennis Montali in San Francisco, who is handling the case.

"Howrey's partners approved this eleventh-hour *Jewel* waiver knowing that similar waivers had been avoided as fraudulent transfers in prior law firm bankruptcies," the estate's filing reads. "Accordingly, the *Jewel* waiver should be avoided here."

But some firms are fighting back. In anticipation of a suit from Diamond, attorneys for Haynes and Boone asked Montali last week to grant them relief from the automatic stay so they can file suit in Washington, D.C. Attorneys for Haynes and Boone contend that District of Columbia law frowns on clawbacks because they restrict client choice, and argue the *Jewel* waiver signed by a former Howrey partner now based in Washington, D.C., for Haynes and Boone was thus meaningless.

"If the *Jewel* waiver was unnecessary and of no practical effect, it cannot have effected a transfer and cannot be the basis for a fraudulent transfer claim against Haynes and Boone," senior attorney Alan Wechsler writes for Haynes and Boone. "This is a pivotal, threshold issue that must be decided prior to any determination of the avoidability of the *Jewel* waiver and of any liability of Haynes and Boone."

Attorneys for Haynes and Boone muse that other former Howrey partners based in Washington, D.C., might be immune to *Jewel*-related claims if their suit prevails. A hearing in the case has been scheduled before Montali on April 25.

Among the firms sued Friday, representatives for Haynes and Boone; Neal Gerber; Kasowitz; and Venable declined to comment. Representatives for Sheppard Mullin; Levenfeld Pearlstein; and Hunton & Williams did not respond to requests for comment.

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