

Howrey Trustee Goes After Ex-Partners For Millions

By **Maria Chutchian**

Law360, New York (March 11, 2013, 8:49 PM ET) -- The trustee overseeing Howrey LLP's liquidation on Monday sued a slew of former partners and the firms they now work for, including Ropes & Gray LLP and Shearman & Sterling LLP, seeking the recovery of millions in allegedly fraudulent distributions and profits from client matters that began at Howrey.

Trustee Allan B. Diamond of Diamond McCarthy LLP is seeking a collective \$2.04 million from Shearman antitrust partners Trevor Soames, Stephen Mavroghenis and Geert Goeteyn — the largest sum from Monday's batch of adversary lawsuits. He claims the group illegally transferred the money to themselves in the midst of Howrey's collapse.

"Despite its insolvency, Howrey transferred tens of millions of dollars as 'distributions' to former Howrey partners," he said.

To that end, Diamond fired off several other suits, including one against intellectual property partner James R. Batchelder, now at Ropes & Gray LLP, for \$1.13 million. Diamond is also suing trial lawyer William R. Martin, who used to work for Dorsey & Whitney before launching his own firm in 2012, demanding slightly more than \$576,000 from him over the supposed transfers.

The trustee says the former partners' moves represent "several badges of fraud" and were an attempt to deliberately conceal assets from creditors, according to the suits, as well as a breach of their partnership agreements.

He is demanding that the partners be forced to return the distributions and is also demanding a full accounting by their new firms of the profits they received from Howrey's unfinished business, which he insists belongs to the estate.

"Shearman & Sterling has information that will show the status of, and profits earned, from Howrey's unfinished business," the suit reads.

Diamond sued Kilpatrick Townsend & Stockton LLP as well, but only for future profits made from unfinished Howrey business, not for former partner distributions. That suit did not name the former partner who went to Kilpatrick from Howrey.

Diamond accuses the former Howrey partners of executing a fraudulent agreement on the eve of the firm's dissolution in an effort to protect themselves against unfinished business claims.

"In a classic self-dealing transaction, Howrey's former partners attempted to shield themselves and their successor firms from unfinished business claims by executing a so-called Jewel Waiver on the eve of Howrey's dissolution," the suits read.

He says he is entitled to recover the profits the former Howrey partners and their new firms have received from completing Howrey's unfinished business, as well as payments made to the former partners while Howrey was insolvent.

Diamond maintains that the partners used the waiver to help save their own skin by using it to counteract the "hardship and uncertainty" of the job market.

"In other words, the former Howrey partners intended to use the anticipated revenues from Howrey's unfinished business to obtain new jobs," according to the suits.

court last August that he planned to go after overdistributions to partners made when Howrey was insolvent a potential source of recovery for the firm's creditors.

None of the partners or representatives for their firms immediately responded to requests for comment Monday.

The move comes just days after a California judge ordered two former Howrey partners to pay Citibank NA for loans they took out to fund their capital contributions to the firm, rejecting their arguments that the bank withheld crucial financial information about the now-bankrupt firm.

On Friday, Judge Peter Busch of the state superior court in San Francisco granted the bank's motion for summary judgment in Stephen O'Neal and David Buoncristiani's suit, which accused the bank of improperly hiding Howrey's dire financial reality from them when it issued the loans. The judge held that Citibank owed a duty of disclosure to the plaintiffs.

"The plaintiffs, as partners in the law firm, are charged with knowledge of the allegedly undisclosed, material information concerning the partnership's financial condition," the judge said in the tentative ruling he adopted Friday. "They had and could exercise full access to the partnership's financial condition and, in fact, had better and more complete access than the bank."

Howrey's downfall began during 2009, when declining profits caused much of the firm's top talent to jump ship. After one-third of its partners left, it opted for an out-of-court wind-down of its global operations. The firm's partners voted during March 2011 to dissolve the firm. Creditors, however, forced an involuntary Chapter 7 bankruptcy, and the firm decided to pursue a Chapter 11 liquidation and resolve its liabilities.

Diamond is represented in the six adversary proceedings by Stephen T. Loden and Andrew B. Ryan of Diamond McCarthy LLP and Eric A. Nyberg and Chris D. Kuhner of Kornfield Nyberg Bendes & Kuhner PC.

Counsel information for the defendants was not immediately available.

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

--Additional reporting by Lance Daroni. Editing by John Quinn and Jeremy Barker.