# Heller settles malpractice spat with Greenberg Traurig

## *If approved, the deal should boost collections for former firm's creditors*

**By Kevin Lee**
Daily Journal Staff Writer

The Heller Ehrman LLP estate and its former dissolution counsel, Greenberg Traurig LLP, have reached a proposed $4.9 million settlement to the estate's malpractice suit against the firm. If approved, the accord would substantially increase collections for the estate's creditors.

The settlement, filed Thursday by the Heller estate's special litigation counsel Christopher Sullivan, finalizes one of the largest anticipated sources of recovery for the estate. U.S. Bankruptcy Judge Dennis Montali will consider the proposal in May.

"There were very hotly contested issues and both sides analyzed those claims. This is a substantial step forward for the estate," Sullivan said. "Frankly, I had expected this to go to trial."

In his settlement motion to the judge, Sullivan wrote that the settlement will allow the estate to increase its distributions to unsecured creditors from 45 percent to more than 55 percent of targeted recoveries.

Headquartered in San Francisco, Heller had offices worldwide and as many as 700 lawyers before it voted to dissolve in September 2008. *In re Heller Ehrman LLP*, 08-bk-32514 (N.D. Cal., filed Dec. 28, 2008).

Greenberg Traurig shareholder Leslie D. Corwin represented Heller as dissolution counsel in the weeks leading up to its bankruptcy filing. That relationship soured when Corwin and his colleagues allegedly failed to discover that Heller's secured lender, Bank of America Corp., had mistakenly negated its rights to the firm's assets in the event its loans failed. The estate believed that it might have filed for bankruptcy protection sooner, had it known of the bank's mistake, saving tens of millions of dollars.

'This is a substantial step forward for the estate.'

— *Christopher Sullivan*

The estate sued Greenberg Traurig and Corwin in 2011 for failing to conduct a routine check of public filings related to Bank of America's security interest in the assets. The estate also alleged that Greenberg Traurig had a conflict of interest because it counted Bank of America as a client at the same time it was representing Heller. *Heller Ehrman LLP v. Greenberg Traurig LLP*, 11-03206 (N.D. Cal., filed Oct. 31, 2011). The estate and Greenberg Traurig later agreed to drop Corwin as a defendant.

"We are happy to resolve this matter and avoid the burden of further costly and diverting litigation," Greenberg Traurig spokeswoman Jill Perry wrote in an email. "We are confident that, had the matter continued, there would have been a finding that our attorneys had acted properly and in our client's best interest."

Michael Burkart, the bankruptcy plan administrator for the Heller estate, called the settlement agreement "reasonable."

"When deciding to settle or to go trial, you're weighing the projected costs of what it's going to take to litigate," Burkart said. "We still had a lot of discovery and a lot of costs remaining, and there's the risk of litigation. You never know what the jury will do."

Thomas A. Willoughby, counsel for the Heller bankruptcy's unsecured creditors committee, said he anticipated creditors would collect on potential settlement proceeds in the second or third quarter of this year.

The Heller estate is still pursuing lawsuits against four law firms that hired former Heller partners and allegedly profited from the work without compensating the estate.

The estate has settled with 46 other law firms over similar unfinished business claims. The firms that are still locked in litigation are Jones Day; Orrick, Herrington & Sutcliffe LLP; Foley & Lardner LLP and Davis Wright Tremaine LLP.

"I don't know where that's going," Burkart said. "Probably to trial."

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