THE RECORDER
ESSENTIAL CALIFORNIA LEGAL CONTENT

Greenberg Settles with Heller Estate for $5 million

Scott Graham

2013-04-25 05:36:22 PM

SAN FRANCISCO — Another settlement domino has fallen in the Heller Ehrman bankruptcy litigation.

Greenberg Traurig has agreed to pay $4.9 million to settle the Heller estate's malpractice, conflict of interest and preference payment claims. "If approved, the settlement will resolve entirely a vigorously contested adversary action and result in an infusion of $4.9 million in cash to provide the major funding for an anticipated upcoming distribution to creditors," Christopher Sullivan, special counsel to Heller's estate, wrote in a Thursday bankruptcy filing.

It would bring to $40 million the amount recovered by the estate, or about 55 percent of what it's owed, according to Sullivan, of Greenfield Sullivan Draa & Harrington.

The estate previously settled with lenders Bank of America and Citibank for $20 million, and with former shareholders now at Covington & Burling and one of their clients for $9 million. The estate also has settled out with all but a small handful of former shareholders.

The only substantial litigation remaining are so-called *Jewel v. Boxer* claims against three other firms that took on former Heller shareholders: Orrick, Herrington & Sutcliffe; Jones Day; Foley & Lardner; and Davis Wright Tremaine.

The dispute settled Thursday, *In re Heller Ehrman*, stems from Heller's retention of Greenberg partner Leslie Corwin in 2008 to advise on strategic options as the firm faced financial crisis. Heller alleges Greenberg failed to disclose a conflict of interest — that it also represented Heller lender Bank of America — and should have recognized that BofA had inadvertently terminated its security interest in Heller's property. Had Heller known about BofA's mistake, Heller contends, it could have avoided the seizure of $56 million it owed BofA and Citibank, instead of being forced into a "chaotic" dissolution. Corwin also negligently advised the firm to waive its *Jewel* claims against departing shareholders as part of its dissolution plan, Heller contends.

Greenberg Traurig contests the allegations, saying Corwin was hired to advise the firm on a potential merger, not on creditor's rights; that Heller knew about and waived the conflict of interest; and that it was actually Heller's sophisticated bankruptcy lawyers who were driving the bus on the firm's dissolution.

The two sides engaged in "extensive document productions," according to the new filing, and were facing expensive depositions of 30 witnesses. Following a two-day mediation earlier this year with Ralph Mabey, a retired bankruptcy judge from New York, the parties settled.

"While the debtor contends that its claims are strong, there are substantial hurdles," Sullivan wrote in his motion for settlement approval. Those hurdles included "the extent to which Heller's dissolution committee members and other Heller shareholders, who were themselves experienced bankruptcy and creditors' rights attorneys, drafted the actual *Jewel* waiver at issue and were themselves aware that the banks' liens were unperfected" and "the extent to which Greenberg disclosed the alleged conflicts of interest to Heller's dissolution committee during meetings."

U.S. Bankruptcy Judge Dennis Montali is scheduled to consider the settlement at a May 31 hearing.

Along with Greenfield Sullivan, the Heller estate was represented by Schnader Harrison Segal & Lewis and Valle Makoff.

Greenberg Traurig was represented by Steptoe & Johnson and Fenwick & West.

Contact the reporter at sgraham@alm.com.
