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Private Equities Seek Chancery Ouster Of Conflicted Trustees

By **Jeff Montgomery**

Law360 (March 7, 2022, 7:21 PM EST) -- A private equity group has sued to obtain a Delaware Chancery Court order removing two advisers the group says failed to properly manage the assets of trusts it formed to monetize $500 million worth of securities, amid warnings that a holding company key to the disputed plan is now considering bankruptcy.

The equity group, Paul Capital Advisors, and its affiliates said in their Friday complaint that GWG Holdings Inc. — the company set up by one of the advisers to monetize the trusts securities — "sits on the edge of bankruptcy, threatening to massively impair the value of the trusts' sole assets after years of trust efforts to secure payment."

The suit, which names Murray T. Holland and James E. Turvey, accuses both of relationships and management ties at odds with Paul Capital interests they were obligated to protect as advisers to Paul Capital seller exchange trusts.

Since the formation and funding of the trusts in 2017 and 2018, the suit said, Holland has also become the chairman, president and CEO of GWG Holdings, which in turn has become the majority owner of the Beneficient Co. Group LP, where Turvey is an executive.

"Holland and Turvey have become hopelessly conflicted, so much so that they cannot be expected to act in the best interests of the trusts and, in turn, the [Paul Capital Advisors] seller fund," the complaint said.

Paul Capital's businesses invested in limited partnership securities of other private equities, and sought to cash out $500 million of the investments through an agreement with Beneficient, with assistance from MHT Financial LLC, which Holland partly owns.

The monetization plan that emerged saw the Paul Capital sellers agree to MHT's auction of the assets that Paul Capital wanted to sell. The auction, however, went to GWG, under agreements that the Paul Capital affiliates would receive at least $550 million. Any shortfall was to be made up by Beneficient.

Among other concerns, the suit said, connections between the Holland-tied MHT and GWG Holdings and its connections with Paul Capital were not disclosed. Holland was accused of standing on both sides of the deal, and of breaching his fiduciary duty by signing an agreement that sought to eliminate Beneficient and MHT's obligations for payments to Paul Capital under the contract.

Paul Capital and its seller funds were not interested in being long-term creditors or owners of GWG Holdings, the suit said. "They were interested in receiving cash, and that is what they were promised," the suit said.

According to the complaint, the Paul Capital parties' cash payout from the deal was initially reduced and then ultimately eliminated through a unilateral change to an agreement that now allows MHT and Beneficient to make up any shortfall in the $500 million minimum net consideration with $350 million worth of GWG common stock and bonds instead of cash.

"More than four years have now passed since the parties signed the transaction documents on Sept. 1, 2017," the suit said. In that time, GWG received interest in the private equity assets and a controlling interest in Beneficient and all involved were relieved of their obligation to make a cash payment to Paul Capital.

After more than three years, in contrast, the Paul Capital interests "still have not received any cash for the GWGH L-Bond and GWGH common stock" initially pledged under the auction. In addition, Paul Capital and its affiliates have had "no discernible help at all" from the trust and MHT.

"Now that GWGH is in severe financial distress and on the verge of bankruptcy, Holland and Turvey cannot be trusted to act in the best interests of the PCA seller fund exchange trusts, and to maximize the value of the GWGH securities" involved, the suit said.

Paul Capital and GWG Holdings did not immediately respond to a request for comment Monday.

Paul Capital Advisors LLC and its affiliates are represented by David E. Ross, Eric D. Selden and A. Gage Whirley of Ross Aronstam & Moritz LLP, and by John F. Hartmann and Ravi Subramanian Shankar of Kirkland & Ellis LLP.

Counsel information for Murray T. Holland, James E. Turvey and their interests was not immediately available.

The case is Paul Capital Advisors LLC et al. v. Murray T. Holland et al., case number 2022-0167, in the Court of Chancery of the State of Delaware.

Editing by Karin Roberts.
