

In The News

SEC Cites 'Misleading' Life Partners Release In Trustee Bid

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Law360

Law360, New York (February 25, 2015, 8:09 PM ET) -- The U.S. Securities and Exchange Commission on Tuesday told a Texas bankruptcy court that a "grossly misleading" news release issued by Life Partners Holdings Inc. earlier this week suggests its former top brass may still be involved in management roles, further underpinning the need for a Chapter 11 trustee.

The SEC told the court in an emergency opposed motion that the "disturbing" statement issued by the life settlement provider on Feb. 23, which informed shareholders that a court-appointed trustee could try to liquidate the company or otherwise adversely affect their interests, painted an inaccurate picture of what could happen if the court grants the SEC's motion.

The same day, newly installed LPHI CEO Colette Pieper also sent an email to the company's clients reiterating the same "warnings" contained in the release, according to the SEC.

But neither the release nor the email made any mention of the fact that former Life Partners CEO Brian Pardo and secretary R. Scott Peden had resigned on Feb. 18. Along with LPHI, Pardo and Peden were ordered to pay \$47 million in December for filing false reports with the SEC.

LPHI filed for bankruptcy in January in an attempt to buy time while it appeals the judgment.

"The issuance of this press release and Ms. Pieper's email are disturbing on several levels, and they confirm that either: (i) Mr. Pardo and Mr. Peden continue to play an active role in the management of LPHI, or (ii) LPHI's current management is woefully inexperienced and lacks the judgment necessary to guide the company through the Chapter 11 process," the SEC said.

Characterizing the release as a "brazen attempt" to frighten shareholders and retail investors, the SEC said that the statement cherry-picked testimony from the trial on the motion.

The Official Committee of Unsecured Creditors reiterated the SEC's request in its own motion on Wednesday, arguing that Life Partners' statement didn't contain a "remotely accurate or objective summary" of the witness' testimony or the hearings conducted by the court on the matter.

The SEC noted in the motion that the release was issued without any prior consultation or notice to it or to other creditors or the U.S. trustee, despite the fact that the company has been a debtor-in-possession for more than a month. Moreover, the news release was based on testimony given on Feb. 12 but apparently timed to coincide with the close of the record on the respective motions for appointment of a Chapter 11 trustee, the agency claimed.

The SEC's original Jan. 23 motion asking for a Chapter 11 trustee to oversee the case pointed to a Texas federal judge's Dec. 2 ruling that Pardo and Peden had committed "egregious" and "serious violations" of federal securities laws, and that oversight at the company had been nonexistent.

The agency noted that immediately after the court entered the final judgment order, Pardo characterized the verdicts against LPHI, Pardo and Peden as “minor” and “the equivalent of a traffic ticket in the securities world.”

The news release at issue in the motions told investors that an appointed trustee could assert the company's ownership over the life settlements purchased on behalf of third party purchasers, or request that the bankruptcy court pool the life settlements and strip all beneficial interests of the purchasers from any singular policy in which they intended to invest.

A trustee could also conduct a bulk sale of the interests, which would likely be sold at a significant discount, or could liquidate the company, according to LPHI's news release.

LPHI has fought bitterly to preclude the appointment of a trustee, instead asking the court to implement a chief restructuring officer.

In a mixed verdict, a jury last year found that Life Partners Holdings, Pardo and Peden committed revenue recognition fraud and violated accounting laws, but cleared them of insider trading and securities fraud offenses.

U.S. District Judge James R. Nowlin went on to ax the fraud claims post-trial but found there was sufficient evidence to support the jury's findings that the defendants filed false or misleading reports with the SEC between January 2007 and November 2011 and that Pardo falsely certified regulatory reports.

The unsecured creditors committee is represented by Jay H. Ong of Munsch Hardt Kopf & Harr PC.

The SEC is represented by its internal counsel, Matthew J. Gulde, B. David Fraser and Neal Jacobson.

Life Partners Holdings is represented by Jeff P. Prostok and J. Robert Forshey of Forshey Prostok LLP, G. Kevin Buchanan of Kevin Buchanan & Associates PLLC, and Melanie Pearce Goolsby, Jason Patrick Kathman and Gerrit M. Pronske of Pronske Goolsby & Kathman PC.

The case is In re: Life Partners Holding, case number 4:15-bk-40289, in the U.S. Bankruptcy Court for the Northern District of Texas.

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