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Schnader Harrison Emails Show Struggle To Refund Clients

By **Emma Cueto**

Law360 (September 18, 2023, 3:48 PM EDT) -- Newly shuttered law firm Schnader Harrison Segal & Lewis LLP has told its attorneys that it is unable to refund client retainers, pay compensation or retirement contributions, or provide malpractice insurance past the end of September, according to emails obtained by Law360 Pulse.

In messages to all attorneys at the Philadelphia-based firm sent at the end of August and the first week of September, Schnader Harrison general counsel Keith Whitson wrote that the firm's bank would not release funds for a number of purposes, including to refund clients, a situation with potential legal ethics implications.

Whitson, who is a member of the firm's windup committee, initially announced the news in an Aug. 31 email to all attorneys, writing, "Despite repeated efforts, we have not obtained the agreement of our secured lender to release funds held on account or as client retainers. As a result, at least for the time being, those funds will not be transmitted to clients."

In response, multiple partners replied-all to the email expressing concern and frustration.

"To state the obvious," wrote partner Bruce Rosenfield, "this is not our money."

Rosenfield and other partners on the email chain did not respond to requests for comment.

Schnader Harrison, which had a long and storied **history in Pennsylvania**, announced Aug. 3 that it would **shut its doors** for good on Aug. 31 after almost 90 years in operation.

The move came after the departure of a number of attorneys throughout 2023, including a **five-attorney aviation group** jumping to Victor Rane in February, **the co-chair** of its financial services practice joining Eckert Seamans Cherin & Mellott LLC in April and **two white collar partners** moving to Welsh & Recker PC in May.

Although the firm has officially closed its doors and most attorneys have found new positions elsewhere, the emails obtained by Law360 suggest that issues related to the closure and the firm's financial position may continue for some time.

Whitson responded in the email conversation several times by saying the firm is working on a way to get its bank to release the funds.

"Please understand that the Liquidating Partners have made strong, repeated arguments to try to get the bank to release these funds," Whitson wrote Sept. 1 in the same email thread. "We do not like this result either and we intend to continue pressing the issue. … You may tell clients that we are extremely unhappy with the current situation, that we are trying multiple routes to get these funds released, that we will continue these efforts and that we will keep them apprised of any progress we make."

He later replied in an email on Sept. 7 that addressed numerous complaints brought up by partners that the firm also could not access funds to provide expected income partner compensation or 401(k) contributions. While the firm was continuing to push the bank, Whitson said, "we are not hopeful that the bank's position will change," adding that the firm also did not have other funds available.

In the same email, Whitson urged partners to focus on billing and collections as the best way to change the bank's position and suggested partners moving to other firms address the refund issue by finding a way to credit client accounts at the new firm against a certain amount of future work.

"We realize this is not the answer you hoped for, but this is the position we are in," he wrote. "Without bank approval, we simply do not have the funds to provide to clients."

In another email obtained by Law360 from Aug. 26, Whitson asked attorneys to keep the firm up to date on collection efforts and identified the firm's bank as WSFS. WSFS Bank, which operates mainly in Philadelphia and Delaware, declined to comment.

Hilary Gerzhoy, vice chair of the D.C. Bar Rules of Professional Conduct Review Committee and a member of the American Bar Association's Ethics and Professional Responsibility Committee, told Law360 Pulse that she had never heard of a bank being able to block access to retainer fees, which ought to be kept in client trust accounts.

"In every jurisdiction, client money needs to be separate from the money of the firm and needs to be held in a trust account," she said. "So to the extent that there was an upfront retainer paid that was contemplated to be used for legal services that were not provided, that money needs to be refunded to clients on demand."

Gerzhoy said she could not say it was impossible for a bank to block access to trust accounts, but added that "the whole purpose" of trust accounts was to protect client money, including in situations where a firm was financially insolvent, and that she was unaware of a situation where a bank might have authority to block such an account from refunding client money.

"What you have described is just not something I have heard of," she said. "It seems on its face it would be problematic."

Assuming Schnader Harrison is being blocked from providing refunds, she said, attorneys who have left the firm could potentially come to agreements with clients to credit their accounts or to provide a certain amount of work on a pro bono basis in the future if a refund was not possible. However, she added, a client would not have to take such a deal, and it was unclear how much such an agreement would protect an attorney from future collection actions or a bar complaint.

In addition to emails discussing the issue of retainer refunds and other payments, Law360 Pulse has obtained a Sept. 7 email from Whitson informing attorneys that the firm had extended its legal malpractice insurance policy with the Attorneys' Liability Assurance Society through Sept. 30, but that after 12:01 a.m. Oct. 1, attorneys would need their own malpractice policies and policies for tail coverage, which would cover future claims based on work performed at Schnader Harrison.

This decision not to extend coverage through the end of the year was made at least in part because it was calculated that individual policies would be cheaper for attorneys and because only 30 of the firm's approximately 90 attorneys agreed to participate in extending the existing policy, according to Whitson's email.

Whitson also sent multiple emails in August and early September instructing attorneys not to speak to the press and to refer press inquiries to him.

Whitson did not respond to a request for comment.

At its peak, the firm had some 300 attorneys and had built a reputation for working on the biggest litigation coming out of the Keystone State, representing high-profile clients from the National Hockey League Players' Association to disgraced comedian Bill Cosby to Pennsylvania government officials.

Co-founded in 1934 by a former Pennsylvania attorney general, Schnader Harrison was also instrumental in major legal and legislative developments throughout the state, including the passage of the Uniform Commercial Code, a major update to the Pennsylvania Constitution in 1968, and the creation of the precursor to the Delaware River Basin Commission, the multistate and federal partnership responsible for policing water quality and usage of the Delaware River.

The firm's headcount had declined sharply since its height, with only about 90 attorneys listed on its website at the time of its closure. The firm has not spoken publicly about the reasons for its shutdown.

In August, **Whitson told Law360 Pulse** that the firm had already resolved many potential issues around its dissolution by working with stakeholders and that it was committed to helping its attorneys and staff find new positions and to ensuring that client service remained uninterrupted.

Since the announcement in early August that it would be winding down operations, most attorneys have found new roles, with the largest groups joining Dilworth Paxson LLP, which absorbed 16 attorneys; Segal McCambridge Singer & Mahoney Ltd., which took 10; and Offit Kurman Attorneys At Law, which added seven. The law firms did not respond to a request for comment on whether their hires were working out deals through their new firms with clients owed refunds.

--Editing by Jill Coffey.
