

Girardi Keese Finances May Take Years, And Luck, To Unravel

By **Brandon Lowrey**

Law360 (March 14, 2022, 10:30 AM EDT) -- More than a year after at least \$2 million meant for the widows and orphans of plane crash victims vanished from Girardi Keese's client trust accounts, the federal judge overseeing the case asked the lawyers what seemed like a simple question in an effort to figure out whom to hold accountable: When did the money leave the firm's bank accounts?

It turned out not to be so simple a question, sparking a bitter fight over what the jumble of numbers in the law firm's accounting records most likely means. And this is only one of many cases of fraud and theft alleged against the firm, which has a complicated web of more than 100 bank accounts with frequent intermingling of funds and disastrously flawed recordkeeping. The firm's owner, Thomas V. Girardi, and his chief bookkeeper have both publicly refused to testify about the firm's finances.

As bankruptcy filings this week showed the defunct firm's liabilities have climbed to \$517 million, the state of its records underscores some of the challenges ahead for those who would try to hold accountable Girardi Keese's bad actors in civil, criminal and bankruptcy proceedings. The firm's bankruptcy trustee has said the financial records are full of irreconcilable numbers, conflicting descriptions and missing transactions, suggesting that it could take great effort to definitively link stolen funds to individual clients.

Seasoned fraud investigators told Law360 that investigators will need time, resources and maybe a lucky break or two to unravel the tangle of transactions.

Key to the process will be bank records, for which Girardi Keese's bankruptcy trustee has issued numerous subpoenas, said Sherine Ebadi, a former FBI financial fraud specialist who led the successful tax fraud investigation into former Trump campaign chair Paul Manafort in 2018.

"You can cook your own books," Ebadi said. "You can file false tax returns, and you can send out altered receipts and do all sorts of funny business with your records. But what you can't do is adjust the bank records."

Ebadi, now an associate managing director on business consulting firm Kroll LLC's forensic investigations and intelligence practice, said it would take at least several months just to collect account information from all of the banks involved. After that, she said, it would take a couple of years to analyze the data and follow the money to make sense of it all.

Finding cooperating witnesses and prioritizing theft claims could speed things along. A cooperating

witness "can point you in the right direction, stop people wasting time, explain things that might take you a long time to figure out otherwise," Ebadi said.

In the case of Girardi Keese, the prospects aren't particularly promising.

Girardi and former Chief Financial Officer Christopher Kamon, the two people seemingly the most likely to be able to make sense of it all, have invoked their Fifth Amendment right not to testify to avoid incriminating themselves. Girardi has also been diagnosed with Alzheimer's disease.

David Lira, who was a senior attorney at Girardi Keese and is Girardi's son-in-law, has said that even he was not privy to the firm's finances and had no real control over them. There were, however, a small number of other employees in the firm's accounting department, though it was unclear what they may have known.

In a case this sprawling, Ebadi said investigators might elect to save some time by not exhaustively probing relatively small amounts.

"It takes just as much work to figure out where \$50,000 went as it does to figure out where \$1 million went," she said. "Those are really the only ways to cut corners and make [the investigations] shorter."

Once a thorough investigation has been completed, Ebadi said that the government would probably focus its criminal charges on a handful of the most well-established instances of wrongdoing, since criminal cases require the highest standard of proof.

Derek Hahn, a Crowell & Moring LLP partner specializing in white-collar defense and internal investigations, said that following the money is often more complicated than it sounds. It takes a team of lawyers, forensic accountants who specialize in fraud, and forensic technology experts who can extract and analyze file data from computers and mobile devices.

"The more data points an investigator can obtain, the more likely a clear picture of the story will emerge," he said.

The fact that some of the allegations against Girardi Keese go back decades may mean that some claims or charges could be too old to prosecute, as they would fall outside of the statute of limitations.

But there could be a way around that, said Crowell & Moring investigative practice chair Tom Hanusik, who was one of the original federal prosecutors on the Enron scandal.

If one or more people besides Girardi were involved in a continuous fraud scheme, prosecutors might be able to charge the crimes as an ongoing conspiracy, Hanusik said. That would restart the statute of limitations clock at the most recent overt act in furtherance of the conspiracy, giving prosecutors more time to bring charges against those involved.

Compared with some corporate fraud cases Hanusik has handled, he said the Girardi Keese matter may be reasonably large in scope but not particularly complex or fundamentally unusual.

The case may contain some unique elements — the profile of the involved people, Girardi's Alzheimer's diagnosis, the specifics about the firm and its victims — but the allegedly doctored records, shifting funds and large number of accounts are far from groundbreaking in cases like this, he said.

"That seems like something that would be more akin to the types of things we have seen a lot over the years," he said.

--Additional reporting by Lauraann Wood. Editing by Pamela Wilkinson and Brian Baresch.

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