

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

GWG HOLDINGS, INC., *et al.*¹

Debtors.

MICHAEL I. GOLDBERG, as Trustee of the
GWG LITIGATION TRUST,

Plaintiff,

v.

JON R. SABES; STEVEN F. SABES; SFS
HOLDINGS, LLC; PREMIER TRUST, INC.,
as Trustee of JON SABES 1992 TRUST NO.
1; PREMIER TRUST, as Trustee of
BROOKE SABES 1995 TRUST; PREMIER
TRUST, as Trustee of JACKSON SABES
1995 TRUST; ROBERT W. SABES, as
Trustee of MOE SABES 12.30.1976 TRUST
F/B/O JON R. SABES; ROBERT W. SABES,
as Trustee of MOE SABES 12.30.1982
TRUST; ROBERT W. SABES, as Trustee of
ESTHER SABES 6.08.1992 TRUST F/B/O
JON R. SABES; JON R. SABES, as Trustee
of KRISTINE SABES 2000 TRUST; JON R.
SABES, as Trustee of MORGAN SABES
2012 TRUST; and INSURANCE
STRATEGIES FUND, LLC,

Defendants.

Chapter 11

Case No. 22-90032 (MI) (Jointly
Administered)

Adv. Pro No. _____

COMPLAINT

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: GWG Holdings, Inc. (2607); GWG Life, LLC (6955); GWG Life USA, LLC (5538); GWG DLP Funding IV, LLC (2589); GWG DLP Funding VI, LLC (6955); and GWG DLP Funding Holdings VI, LLC (6955). The location of Debtor GWG Holdings, Inc.'s principal place of business and the Debtors' service address is 325 N. St. Paul Street, Suite 2650 Dallas, TX 75201. Further information regarding the Debtors and these chapter 11 cases is available at the website of the Debtors' claims and noticing agent: <https://donlinrecano.com/gwg>.

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Michael I. Goldberg, as Trustee (the “Trustee”) of the GWG Litigation Trust (the “Litigation Trust”), the successor-in-interest to the claims of claims of GWG Holdings, Inc. (“GWG”) and its affiliated debtors and debtors-in-possession (collectively, “Debtors”), by and through his undersigned counsel, respectfully alleges the following:

NATURE OF THE ACTION

1. The Trustee brings this action under §§ 544 and 550 of the Bankruptcy Code to avoid and recover more than \$18 million dollars in fraudulent transfers made by GWG to its shareholders as dividend payments. The dividend payments—which, by definition, provided no value to GWG—are fraudulent under the Texas UFTA, Tex. Bus. & Com. § 24.001 *et seq.* (or other applicable law), because GWG was insolvent at the time it paid them.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Adversary Proceeding under 28 U.S.C. §§ 157(a) and 1334(b) because it asserts causes of action arising in, arising under, and/or relating to the above-captioned bankruptcy case, and causes of action arising under the Bankruptcy Code.

3. Venue is proper pursuant to 28 U.S.C. § 1409.

4. This Court has personal jurisdiction over Defendants in this proceeding because each Defendant has sufficient contacts with the United States of America to be subject to nationwide service of process under Federal Rule of Bankruptcy Procedure 7004.

5. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Bankruptcy Local Rule 7008-1, the Litigation Trust consents to the entry of final orders or judgements by this Court.

PARTIES

A. Plaintiff Litigation Trustee

6. On April 20, 2022, GWG and its subsidiaries GWG Life, LLC, GWG Life USA, LLC, GWG DLP Funding IV, LLC, GWG DLP Funding VI, LLC, and GWG DLP Funding Holdings VI, LLC filed for bankruptcy in the United States Bankruptcy Court for the Southern District of Texas (the “Court”). On June 20, 2023, the Court confirmed Debtors’ Chapter 11 plan of liquidation (the “Plan”) (ECF No. 1678).

7. The Litigation Trust was created, and Plaintiff Trustee was appointed, pursuant to the Plan. Under the Plan and the Litigation Trust Agreement (ECF No. 1910), certain claims and causes of action belonging to Debtors, including the claims asserted in this action, were assigned to the Litigation Trust for prosecution by the Trustee as a representative of the bankruptcy estate pursuant to 11 U.S.C. § 1123(a)(5), (a)(7), and (b)(3)(B). The Trustee is the successor-in-interest of Debtors for the purpose of pursuing the assigned claims and therefore has standing to pursue the claims asserted in this action.

B. Defendants

8. Defendant Jon R. Sabes was co-founder, director, and CEO of GWG until on or about April 26, 2019. As further described below, in September 2018, Jon Sabes in his individual capacity received a \$ 5,287,047.80 dividend payment from GWG. Defendant Jon Sabes is a citizen of Texas and is believed to reside in or near Austin, Texas.

9. Defendant Steven F. Sabes was co-founder, director, and Executive Vice President of GWG until on or about April 26, 2019. As further described below, in September 2018, Steven Sabes in his individual capacity received a \$ 4,526,777.70 dividend payment from GWG. Defendant Steven Sabes is a citizen of Minnesota and is believed to reside in or near Minneapolis, Minnesota.

10. Defendant SFS Holdings, LLC (“SFS”) is a Nevada limited liability company. As further described below, in September 2018, SFS received a \$ 4,611,242.60 dividend payment from GWG. Upon information and belief, the manager of SFS Holdings, LLC is Steven F. Sabes.

11. Defendant Premier Trust, Inc. is the trustee of Jon Sabes 1992 Trust No. 1. As further described below, in September 2018, Jon Sabes 1992 Trust No. 1 received a \$ 729,585.30 dividend payment from GWG.

12. Defendant Premier Trust, Inc. is the trustee of Brooke Sabes 1995 Trust. As further described below, in September 2018, Brooke Sabes 1995 Trust received a \$ 99,699.80 dividend payment from GWG.

13. Defendant Premier Trust, Inc. is the trustee of Jackson Sabes 1995 Trust. As further described below, in September 2018, Jackson Sabes 1995 Trust received a \$ 99,747.10 dividend payment from GWG.

14. Defendant Robert W. Sabes is the trustee of Moe Sabes 12.30.1976 Trust F/B/O Jon R. Sabes. As further described below, in September 2018, Moe Sabes 12.30.1976 Trust F/B/O Jon R. Sabes received a \$ 704,069.10 dividend payment from GWG.

15. Defendant Robert W. Sabes is the trustee of Moe Sabes 12.30.1982 Trust F/B/O Jon R. Sabes. As further described below, in September 2018, Moe Sabes 12.30.1982 Trust F/B/O Jon R. Sabes received a \$ 1,039,013.30 dividend payment from GWG.

16. Defendant Robert W. Sabes is the trustee of Esther Sabes 6.08.1992 Trust F/B/O Jon R. Sabes. As further described below, in September 2018, Esther Sabes 6.08.1992 Trust F/B/O Jon R. Sabes received a \$ 725,844.30 dividend payment from GWG.

17. Defendant Jon R. Sabes is the trustee of Kristine Sabes 2000 Trust. As further described below, in September 2018, Kristine Sabes 2000 Trust received a \$ 138,795.40 dividend payment from GWG.

18. Defendant Jon R. Sabes is the trustee of Morgan Sabes 2012 Trust. As further described below, in September 2018, Morgan Sabes 2012 Trust received a \$ 101,183.30 dividend payment from GWG.

19. Defendant Insurance Strategies Fund, LLC ("Strategies Fund") is a Delaware limited liability company. As further described below, in September 2018, Strategies Fund received a \$ 101,183.30 dividend payment from GWG. Upon information and belief, the manager of Strategies Fund is ISF Management, LLC, and the manager of that entity is Jon R. Sabes.

FACTUAL BACKGROUND

A. Overview of GWG's Business.

20. GWG's business was originally organized in February 2006 by Jon and Steven Sabes (collectively, the "Sabes Brothers"). For most of its history, GWG focused on acquiring life insurance policies through the secondary market at a discount to the ultimate death benefit of the policies. GWG acquired the cash to purchase these policies through a combination of proceeds from maturities of previously purchased policies and the through the public sale of renewable secured debentures, which GWG called "L Bonds."

B. The Master Exchange Agreement with BEN.

21. While GWG's primary business was investing in life insurance policies, it expanded its business model in early 2018 when it agreed to purchase interest in The Beneficient Company Group, L.P. ("Ben LP"). At that time, Ben LP and its subsidiaries (collectively, "BEN") were a start-up company that intended to operate as a "fund of funds" type investment business by obtaining—via a complex network of related trusts—illiquid alternative assets from mid-to-high

net worth individuals and smaller institutions holding alternative assets (*e.g.*, limited partnership interests in private equity funds), for which there is not an established secondary market.

22. On or around January 12, 2018, GWG entered into a Master Exchange Agreement with Ben LP, MHT Financial SPV, L.L.C., and certain related trusts (the “Seller Trusts”). The Master Exchange Agreement anticipated, among other things, that Ben LP would incur a substantial debt to GWG.

23. Thereafter, a series of convoluted “Exchange Transactions” took place in multiple steps throughout 2018. Despite the relevant agreements indicating the transaction would close by April 30, 2018, the closing date was pushed several times because of a delay in BEN’s audited financial statements. Eventually, the closing was bifurcated into two stages—the first stage occurring in August 2018 and the second in December 2018.

24. The net effect of these transactions, by year end, was that: (a) GWG, through a wholly owned subsidiary, loaned \$192.5 million to Ben LP as a commercial loan (the “CLA”) and received approximately 30 million common units of Ben LP; (b) the Seller Trusts obtained majority ownership of GWG stock and also obtained “L Bonds” representing \$366.9 million in debt owed by GWG to the Seller Trusts; and (c) BEN obtained equity interests in GWG, and trusts affiliated with BEN ended up with secondary private equity investments.

C. The Sabes Brothers Cause GWG to Issue a Dividend to Themselves and Their Affiliated Trusts and Entities.

25. On or around August 10, 2018, GWG’s directors, including the Sabes Brothers, voted to pay a dividend to GWG’s common stockholders.

26. Thereafter, on around September 4, 2018, GWG paid a total \$25.7 million to its common stockholders (the “2018 Dividend”). The Sabes Brothers and various entities or trusts associated with them or their family members received the majority of this dividend payment. The

2018 Dividend, however, violated Delaware corporate law, as well as applicable fraudulent-transfer statutes, because GWG was insolvent at the time, was undercapitalized, and/or lacked the ability to pay its debts when due.

D. GWG Was Insolvent, Had Unreasonably Small Capital, and Lacked the Ability to Pay its Debts When Due.

27. The transactions associated with the Master Exchange Agreement rendered GWG balance-sheet insolvent and/or left GWG with unreasonably small capital and the inability to pay its debts as they came due. GWG incurred substantial debt as part of its investment in Ben LP (the liability on Seller Trust L bonds) but received largely worthless equity in Ben LP in exchange. Meanwhile, this created a negative interest rate differential for GWG because the interest rate on the Seller Trust L bonds exceeded the interest rate on GWG's loan to BEN under the CLA.

28. At year-end 2018, GWG had more than \$1.199 billion in liabilities. The amount of these liabilities exceeded the fair value of GWG's assets.

29. On its 2018 audited financial statements, GWG reported around \$125 million in cash and cash equivalents, and the fair value of its primary asset, its life insurance policies, was estimated to be \$747.9 million. GWG also recorded the CLA receivable as an approximately \$185 million asset. While the CLA receivable had some value, it was unlikely that GWG would receive full repayment on the loan because, among other reasons, it was unsecured and subordinated to other alleged debt at BEN. Moreover, BEN's business was unproven and sustained losses and negative operating cash flow. Accordingly, a loan loss reserve or similar impairment charge should have been recognized with respect to the CLA, reducing the fair value of the receivable.

30. Finally, although GWG ascribed significant value to its investment in BEN, this investment was, in truth, effectively worthless. At the time of the Master Exchange Agreement (as well as at year-end 2018), BEN lacked the required trust charter it needed to become fully

operational—and it would not receive this charter until more than three years later. Moreover, even if BEN had the required trust charter back in 2018, the assumptions underlying BEN’s business plan and financial projections in 2018 were seriously flawed—and they remain seriously flawed today.

31. First, BEN’s financial projections were unreasonable and unrealistic because they ignored the fact that BEN would likely have to issue BEN equity to acquire the illiquid alternative investments. Simply put, BEN’s assumptions that: (a) it could grow its business through issuing BEN equity in exchange for alternative assets in “liquidity transactions” and (b) yet BEN’s stock price would somehow simultaneously grow over time were internally inconsistent.

32. Second, and more importantly, BEN’s financial projections were wildly unrealistic and unreasonable because they were not based on historical results, but instead unrealistically assumed—while making additional conceptual and economic errors—that: (a) BEN would achieve rapid growth; and (b) BEN would be able to acquire high quality assets at opportune times. Neither assumption had any basis in reality, especially in the fall of 2018. And even worse, BEN’s projections were not based on historical results (presumably, because BEN only burned cash) but instead hypothetical projections based on a statistical simulation.

33. After BEN finally got its trust charter in December 2021, it entered into merger with Avalon Acquisition Inc. (“Avalon”) that would allow BEN to go public. BEN’s merger transaction with Avalon closed on June 7, 2023. The first few days of trading post-merger saw heavy trading volume and progressively lower closes, as investors quickly tried to exit their investments.

34. The closing price of BEN’s stock went down every single day for over two weeks, losing two-thirds of its value almost immediately. On October 16, 2023, it closed at \$0.9580. From

there, matters got even worse for BEN. BEN's stock price ended 2023 at \$0.4860, and it did not close above \$0.50 thereafter. After BEN's stock traded below \$0.10 for at least ten consecutive trading days, on March 22, 2024, NASDAQ delisted BEN's stock.²

35. Thus, even after receiving the trust charter and going public—years after the Master Exchange Agreement—BEN is an effectively worthless company. And since BEN needed the trust charter and access to capital to operate its business, whatever value BEN had in 2018 likely is less than its current value (which, again, is effectively nothing). Moreover, in 2018, GWG's equity in BEN was subordinated to other preferred shares, further depressing the value of GWG's holdings. GWG's equity investment in BEN was—and remains—effectively worthless.

36. In sum, after substantially, if not completely, discounting the value of GWG's equity in BEN, the fair value of all GWG's assets was less than the amount of its outstanding liabilities. And, if the fair value of the CLA is also discounted (as it should have been given its below market interest rate), then GWG's insolvency at year-end 2018 was even greater.

37. GWG also had insufficient capital and lacked the ability to pay its debts as they came due. Specifically, given the terms and recovery risks associated with the CLA (which, unsurprisingly, was not repaid with cash, but rather with more worthless BEN stock) and the money squandered on the BEN investment, GWG did not have the ability to pay its debts, including the debts owed to holders of the L Bonds, when due.

38. The moment that GWG became entangled with and bet entire future on BEN, it was doomed to fail. While GWG limped along for several years after paying the 2018 Dividend, it filed for bankruptcy in April 2022.

² BEN is appealing the delisting. BEN also executed a 1-for-80 reverse stock split on or around or April 17, 2024. The reverse stock split is intended to enable BEN to regain compliance with the minimum bid price requirement for continued listing on NASDAQ.

CAUSE OF ACTION

**Avoidance of the 2018 Dividend as a Constructive Fraudulent Transfer
under §§ 544(b) and 550**

(Against all Defendants)

39. The Trustee repeats and realleges each of the allegations set forth above as if fully set forth herein.

40. The 2018 Dividend resulted in transfers of interests in the property of GWG to its shareholders, including to Jon R. Sabes, Steven F. Sabes, SFS, Jon Sabes 1992 Trust No. 1, Brooke Sabes 1995 Trust, Jackson Sabes 1995 Trust, Esther Sabes 6.08.1992 Trust F/B/O Jon R. Sabes, Moe Sabes 12.30.1982 Trust F/B/O Jon R. Sabes, Moe Sabes 12.30.1976 Trust F/B/O Jon R. Sabes, Kristine Sabes 2000 Trust, Morgan Sabes 2012 Trust, and Insurance Strategies Fund, LLC.

41. GWG did not receive any value by making the 2018 Dividend payments.

42. GWG was insolvent at the time of the 2018 Dividend, had inadequate capital, and was engaged or was about to engage in a business for which its remaining assets were unreasonably small in relation to the business.

43. GWG also did not have the ability to pay its debts—notably, those owed to holders of its L Bonds—as they matured because once GWG poured its resources into BEN, it depended on BEN to actually deliver a return on the amounts transferred (which BEN did not ever do). GWG’s liabilities on its L Bonds went from roughly \$447 million in 2017 to \$927 million in 2019. By the end of 2020, the amount had increased to almost \$1.247 billion.

44. Further, for similar reasons, GWG reasonably should have known that it would incur debts beyond its ability to pay them. GWG bet the company on BEN’s business and would not be able to repay creditors (such as holders of L Bonds) if BEN collapsed. GWG reasonably should have known that BEN was, or would become, worthless.

45. Under § 544(b) of the Bankruptcy Code, GWG may avoid any transfer of an interest in property and any obligation incurred by GWG that is voidable under other applicable law by a creditor holding an unsecured, allowable claim. At the time of the 2018 Dividend, GWG owed debts to, among others, its L Bondholders. One or more of these L Bondholders can avoid the 2018 Dividend payments as fraudulent transfers under the Texas UFTA, Tex. Bus. & Com. § 24.001 *et seq.*, or other applicable law, and hold allowed or allowable claims. Therefore, under § 544(b), the Trustee may avoid the 2018 Dividend and recovery the value of property transferred.

46. Under § 550, the following persons are liable as initial transferees of the 2018 Dividend:

Name	Trustee	Amount of Dividend
Jon R. Sabes	N/A	\$ 5,287,047.80
Steven F. Sabes	N/A	\$ 4,526,777.70
SFS Holdings, LLC	N/A	\$ 4,611,242.60
Jon Sabes 1992 Trust No. 1	Premier Trust, Inc	\$ 729,585.30
Brooke Sabes 1995 Trust	Premier Trust, Inc	\$ 99,699.80
Jackson Sabes 1995 Trust	Premier Trust, Inc	\$ 99,747.10
Esther Sabes 6.08.1992 Trust F/B/O Jon R. Sabes	Robert W. Sabes	\$ 725,844.30
Moe Sabes 12.30.1982 Trust F/B/O Jon R. Sabes	Robert W. Sabes	\$ 1,039,013.30
Moe Sabes 12.30.1976 Trust F/B/O Jon R. Sabes	Robert W. Sabes	\$ 704,069.10
Kristine Sabes 2000 Trust	Jon R. Sabes	\$ 138,795.40
Morgan Sabes 2012 Trust	Jon R. Sabes	\$ 101,183.30
Insurance Strategies Fund, LLC	N/A	<u>\$ 101,183.30</u>
	Total:	\$18,164,189.00

PRAYER FOR RELIEF

THEREFORE, Plaintiff respectfully prays for judgment in Plaintiff's favor, and against Defendants as follows:

- a) Avoiding as fraudulent the dividend payments to Defendants;

- b) Awarding Plaintiff the recovery of the property transferred;
- c) Awarding Plaintiff its reasonable attorneys' fees and costs incurred in the prosecution of this action to the extent allowed by law or equity; and
- d) Awarding Plaintiff prejudgment and post-judgment interest at the highest rates allowed by law or equity; and/or
- e) Granting Plaintiff such other and further relief, at law or equity, as the Court determines is just and appropriate.

Dated: April 19, 2024

REID COLLINS & TSAI LLP

By: /s/ William T. Reid, IV
William T. Reid, IV
Tex. Bar No. 00788817
S.D. Tex. Bar No. 17074
Nathaniel J. Palmer (admitted *pro hac vice*)
Tex. Bar No. 24065864
Joshua J. Bruckerhoff
Tex. Bar. No. 24059504
S.D. Tex. Bar No. 1049153
Morgan M. Menchaca
Tex. Bar No. 24103877
S.D. Tex. Bar No. 3697565
Dylan Jones (admitted *pro hac vice*)
Tex. Bar No. 24126834
1301 S. Capital of Texas Hwy
Building C, Suite 300
Austin, Texas 78746
(512) 647-6100
wreid@reidcollins.com
npalmer@reidcollins.com
jbruckerhoff@reidcollins.com
mmenchaca@reidcollins.com
djones@reidcollins.com

Michael J. Yoder (admitted *pro hac vice*)
Tex. Bar No. 24056572
1601 Elm Street, Ste 4200
Dallas, Texas 75201
(214) 420-8912
myoder@reidcollins.com

Tarek F.M. Saad (admitted *pro hac vice*)
Tex. Bar No. 00784892
420 Lexington Avenue, Suite 2731
New York, NY 10170
(212) 344-5203
tsaad@reidcollins.com

Counsel for the GWG Litigation Trustee