

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>In re:</p> <p>BERNARD L. MADOFF INVESTMENT SECURITIES LLC,</p> <p>Debtor.</p>	<p>Adv. Pro. No. 08-1789 (SMB)</p> <p>SIPA LIQUIDATION</p> <p>(Substantively Consolidated)</p>
<p>IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>DEFENDANTS LISTED ON EXHIBITS A AND B TO DEFENDANTS' NOTICE OF MOTIONS TO DISMISS,</p> <p>Defendants.</p>	<p>Adv. Pro. Nos. listed on Exhibits A and B to Defendants' Notices of Motions to Dismiss</p>

**DECLARATION OF NICHOLAS J. CREMONA, PURSUANT TO 28 U.S.C. § 1746,
IN SUPPORT OF TRUSTEE'S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

Pursuant to 28 U.S.C. § 1746, NICHOLAS J. CREMONA hereby declares as follows:

1. I am a partner at Baker & Hostetler LLP, counsel for Plaintiff Irving H. Picard, plaintiff in the above captioned action, and I submit this declaration in opposition to the Motions to Dismiss filed by Defendants (collectively, the "Motion") represented by Becker & Poliakoff LLP and listed on Exhibits A and B attached to the Notice of Motions to Dismiss ("Defendants"), in which Defendants ask this Court to dismiss the complaints ("Complaints") filed by the Trustee.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint filed in *Greiff v. Becker & Poliakoff*, No. 13-21888-CA (Fla. Cir. Ct. June 20, 2013).

3. Exhibit B to the Motion states that the 194 Defendants listed therein did not file claims, when in fact, 105 of those Defendants filed a total of 168 claims with the BLMIS estate. Attached hereto as Exhibit 2 is an accurate list of all the claims filed on behalf of Defendants cited in Exhibit B to the Motion.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Transcript from the June 1, 2011 Hearing on the Sixth Application Of The Trustee And Baker & Hostetler LLP For Allowance Of Interim Compensation For Services Rendered And Reimbursement Of Actual And Necessary Expenses Incurred From October 1, 2010 Through March 31, 2011.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Transcript of Oral Argument, *Picard v. Greiff*, No. 11 Civ. 3775 (JSR) (S.D.N.Y. July 28, 2011).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 17, 2014
New York, New York

/s/ Nicholas J. Cremona
Nicholas J. Cremona

EXHIBIT 1

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**IN THE CIRCUIT COURT OF
THE ELEVENTH CIRCUIT, IN
AND FOR DADE, FLORIDA**

JAMES GREIFF,

CASE NO: 13-21888-CA

Plaintiff,

vs.

**RICHARD ALAN CAHAN,
And BECKER & POLIAKOFF, a
Florida professional service corporation,**

Defendants.

COMPLAINT

Plaintiff, James Greiff, sues Defendants, Richard Alan Cahan, and Becker & Poliakoff, a Florida professional service corporation, and says:

Jurisdiction and Venue

1. This is an action for damages in excess of \$15,000.00, exclusive of interest, costs, and attorney's fees.
2. Venue is proper in Dade County, Florida because the Defendants maintain their primary place of business in this county, and because the wrongful acts that are the subject of this action occurred primarily in this county.

Identification of the Parties

3. Plaintiff, James Greiff, is an individual, *sui juris*, residing in Walton County, Florida. The Plaintiff will be referred to herein as “Plaintiff “ or as “Greiff.”

4. Defendant, Richard Alan Cahan, is an individual, *sui juris*, residing in Dade County, Florida. This defendant will be referred to herein as “Cahan.”

5. At all material times hereto, Cahan was licensed to practice law in the State of Florida, and was holding himself out to the public as a lawyer.

6. Defendant, Becker & Poliakoff, P.A., is a Florida professional service corporation holding itself out to the public as a law firm. This law firm maintains offices throughout the state of Florida, but conducts the practice of law in Dade County at its Coral Gables office located at Alhambra Towers, 121 Alhambra Plaza, 12th Floor, Coral Gables, Florida. This Defendant will be referred to herein as “B & P.”

Common Allegations

7. Prior to establishing an attorney client relationship with the Defendants, Plaintiff was named as a defendant in certain lawsuits in which money damages were sought against him. These actions included an adversary proceeding filed in the bankruptcy court of the Southern District of New York, styled as *Irving H. Picard, as Trustee for the liquidation of the Bernard L. Madoff*

Investment Securities LLC. (Hereafter, this action shall be referred to as the “New York Adversary Proceeding”). In that action, the trustee sought to recover from Plaintiff, and other former clients of Bernard Madoff, sums of money that had been paid to them as investment income before Mr. Madoff’s firm declared bankruptcy. The trustee demanded the return of monies in excess of two million dollars (\$2,000,000.00) in that action.

8. To protect himself, Plaintiff retained legal counsel through the New York office of Defendant B & P. Defendant B & P entered an appearance on behalf of Plaintiff in the adversary action, and the law firm agreed to defend and protect Plaintiff from the claims of the Trustee.

9. Plaintiff then sought legal advice from his personal legal counsel regarding the best legal means to protect his assets from any judgment that would be entered against him. Plaintiff’s legal advisor recommended Defendant Cahan as an attorney who specialized in the area of lawful asset protection, and he suggested that Plaintiff seek legal advice from him. Plaintiff agreed that his contact information could be provided to Defendant Cahan for this purpose.

10. Defendant Cahan subsequently initiated contact with Plaintiff by calling him on his cell phone. Cahan introduced himself as an attorney who specialized in helping individuals protect their assets from the claims of creditors.

11. Defendant Cahan and Plaintiff had several phone conversations regarding this issue. During these phone conversations, Plaintiff explained that he had substantial assets that he had acquired through successful business enterprises, including money that he had invested with Bernard Madoff before his firm went bankrupt, and before it was discovered that his clients, including Plaintiff, were victims of a massive Ponzi scheme. Plaintiff expressed his concern about judgments being entered against him by which his personal assets could be seized. Plaintiff further informed Defendant Cahan that Defendant B & P was representing him in the New York Adversary Proceeding.

12. Defendant Cahan explained that he was expert in the area of asset protection. He told Plaintiff that he could help him with a legal and lawful scheme by which his assets would be protected from the claims of creditors. Defendant Cahan explained that his methods involved the use of a Post-Nuptial Agreement for transferring Plaintiff's assets to Plaintiff's wife, and placing them in off shore accounts that were not subject to legal process. Defendant Cahan represented that he had done this successfully for many clients.

13. Plaintiff informed Defendant Cahan that he had been married for a period of approximately six years, having had a child with his wife. Plaintiff further explained to Defendant Cahan that most of his wealth had been acquired before his marriage and that his wife had no substantial assets of her own. At this

time, Plaintiff had no concerns regarding his wife divorcing him and he had no need for legal advice regarding the resolution of any marital conflict, and in fact, no marital conflict existed to Plaintiff's knowledge.

14. After several phone conversations, all of which were initiated by Defendant Cahan, Defendant Cahan stated that Plaintiff would need to pay a legal fee and retain him before he would provide any further advice regarding the protection of Plaintiff's assets. Cahan demanded, and Plaintiff paid, a flat fee of forty-four thousand dollars (\$44,000.00) for the purpose of retaining him as Plaintiff's legal advisor. Plaintiff paid the fee with his credit card. Cahan told Plaintiff that he was lowering his customary fee of fifty-five thousand dollars (\$55,000.00) in consideration of the referral relationship he enjoyed with Plaintiff's legal advisor.

15. During these phone conversations, Defendant Cahan never mentioned that he would represent Plaintiff's wife exclusively, nor did he ever mention that other lawyers would be used to create this scheme of asset protection. At all times, Defendant Cahan represented that he would be the lawyer creating the asset protection scheme for the benefit of Plaintiff, and for the specific purpose of assisting Plaintiff with protecting his personal assets from the claims his creditors.

16. At the time the fee was paid, Defendant Cahan had never met with nor spoken to Defendant's wife. Defendant's wife had not initiated any

communication with Defendant Cahan, nor had she even sought legal advice regarding any legal liabilities of her own.

17. After Plaintiff paid Defendant Cahan the forty-four thousand dollars, Defendant Cahan explained to Plaintiff that the best means of protecting his assets required that Plaintiff's wife enter into a retainer agreement with Defendant Cahan and B & P so that they could represent her as a client. Defendant Cahan further explained that Plaintiff's wife would waive her attorney client privilege so that Plaintiff could participate in any and all communications between Defendant Cahan and Plaintiff's wife.

18. Believing that Defendant Cahan was representing his best interests and advising him in the best means for protecting his assets, as Defendant Cahan had promised to do, Plaintiff agreed to this arrangement.

19. Defendant Cahan then arranged for a meeting with two additional attorneys, Andrew Leinoff and Henry Bugay. These lawyers were introduced to Plaintiff as attorneys who would represent Plaintiff and his wife in the preparation of a Post-Nuptial Agreement, by which Plaintiff's assets would be transferred to his wife. Defendant Cahan assigned Mr. Leinoff to Plaintiff's wife, and assigned Bugay to represent Plaintiff.

20. Plaintiff agreed to all of the arrangements recommended by Defendant Cahan, believing them to be in his best interest and designed for the purpose of

allowing him to protect his assets from the claims of his creditors. In fact, Defendant Cahan told Plaintiff that he and his wife had to have separate lawyers in order for the asset protection scheme to be effective. Plaintiff agreed to retain Bugay, believing that such retainer was necessary to effectuate the asset protection scheme recommended by Defendant Cahan.

21. Regardless of the arrangements recommended by Defendant Cahan, Plaintiff at all times material to the allegations in this Complaint, reasonably believed that Defendant Cahan remained his lawyer, for the purpose of advising him and arranging for the protection of Plaintiff's assets, as Defendant Cahan had promised to do during his initial conversations with Plaintiff.

22. Based on the advice of Defendant Cahan, Plaintiff executed a Post-Nuptial Agreement, dated March 30th, 2011. In that agreement, Plaintiff agreed to convey unconditionally substantially all of his personal wealth to his wife. These assets included:

- a. Liquid funds in savings accounts, money market accounts and equity accounts valued at approximately \$1,400,000.00, with a credit back to Plaintiff in the amount of \$200,000.00;
- b. A beachside condominium valued at approximately one million dollars, free and clear of any mortgage;

- c. A beachside home valued at approximately \$3,000,000.00, encumbered with a mortgage of approximately \$700,000.00;
- d. Two (2) plots of land in a gated community in Alpharetta, Georgia, valued at approximately one million four-hundred thousand dollars;
- e. Two luxury automobiles, a BMW and an Aston Martin DB9.

23. In all, Plaintiff conveyed unconditionally to his wife assets having a total value of approximately six million dollars. Nearly all these assets had been acquired by Plaintiff before he entered into the marriage with his wife, such that it was highly unlikely that she would have any legal claims to these assets in the event of a dissolution of the marriage. All the assets were acquired as a result of the Plaintiff's earnings and employment. Plaintiff's wife did not make any money of her own and did not own any substantial assets before the marriage.

24. As consideration for this transfer, the Post-Nuptial Agreement recited that Plaintiff's wife would waive any and all claims she might have against income earned by Plaintiff for the three (3) year period following the execution of the agreement. However, at the time of the execution of the agreement, Plaintiff was not earning income, and he had no prospects or plans of any kind for earning income. In fact at this time, Plaintiff's business was insolvent.

25. The Post-Nuptial Agreement was a sham. Defendant Cahan created the agreement as a devise solely for the purpose of creating a vehicle for the transfer of Plaintiff's assets to his wife, and in furtherance of the scheme of asset protection conceived of and devised by Defendant Cahan, and recommended by him to Plaintiff.

26. Following the legal advice of Defendant Cahan, Plaintiff proceeded to transfer his assets unconditionally to his wife. Liquid assets transferred to Plaintiff's wife were deposited in an off shore account that was established with the assistance of Defendant Cahan.

27. Following the final transfer of Plaintiff's wealth, Plaintiff's wife commenced an action for the dissolution of marriage. During that action, Plaintiff's wife sought to enforce the Post-Nuptial Agreement and sought to retain all of the assets transferred by Plaintiff to her pursuant to that agreement.

28. Defendant defended this effort and sought through his legal counsel to have the Post-Nuptial Agreement rescinded and declared invalid as a sham.

29. On September 24, 2012, the court in the dissolution action entered an order enforcing the Post-Nuptial Agreement, finding the agreement to be valid and controlling as to the assets that were the subject of the agreement.

30. As a result of Defendant Cahan's scheme of asset protection, Plaintiff now has almost no assets or wealth. In addition to the marriage dissolution

proceeding commenced by Plaintiff's wife (which remains pending), Plaintiff's wife has called upon Plaintiff to indemnify and protect her pursuant to the provisions of the Post-Nuptial Agreement. Specifically, Plaintiff's wife has been sued by his judgment creditor for being the recipient of a fraudulent transfer of Plaintiff's assets. Plaintiff's judgment creditor has demanded that Plaintiff's wife satisfy the judgment held by this creditor against Plaintiff. As a result, Plaintiff's wife has retained attorneys to protect her newly acquired assets and has incurred substantial legal fees. Plaintiff's wife has demanded Plaintiff pay those legal fees pursuant to the indemnification provisions of the Post-Nuptial Agreement, by which Plaintiff was required to indemnify and hold harmless his wife from any and all obligations arising from the parties' ownership interest in the property conveyed pursuant to the agreement.

31. Furthermore, as of the time of the filing of this Complaint, Defendant B & P is still acting as counsel of record for Plaintiff in the New York Adversary Proceeding. However, Plaintiff's counsel in that action has informed him that she must withdraw and that Plaintiff must find a new lawyer. Because of the financial devastation inflicted upon Plaintiff by Defendant Cahan and the law firm, Plaintiff is without financial ability to retain a new lawyer to protect him. If Defendant B & P abandons Plaintiff as a client in the New York Adversary Proceeding, Plaintiff will be exposed to enormous liability for the damages sought by the trustee.

32. In addition to these substantial economic losses suffered by Plaintiff as a result of the negligent and reckless asset protection scheme recommended by Defendant Cahan, Plaintiff has suffered and will continue to suffer enormous anxiety, concern and mental suffering as a result of losing nearly all his wealth, and in being subjected to the legal demands and claims made upon him by his wife, all of which originate from the Post-Nuptial Agreement created and recommended by Defendant Cahan.

33. All conditions precedent to bringing this action against Defendants been performed, have occurred, or have been waived.

COUNT I
NEGLIGENCE OF DEFENDANT CAHAN

34. The allegations of paragraphs 1 through 33 as set forth above are realleged in full and incorporated herein by reference.

35. This is an action for negligence arising out of the legal malpractice of Defendant Cahan.

36. At all times material hereto, Defendant was retained or employed by Plaintiff and entered into an attorney-client relationship with Plaintiff to serve as his legal counsel and attorney to offer legal services, counseling and advisement. Specifically, Defendant Cahan agreed to advise and assist Plaintiff with legal means for protecting his assets from creditors.

37. At all times material hereto, Defendant Cahan owed Plaintiff a reasonable duty of care in representing, counseling and advising Plaintiff in a professional manner with diligence and due care in conformity with and under generally accepted practices.

38. At all times material hereto, Defendant Cahan breached a reasonable and acceptable duty of care owed to Plaintiff during the rendering of professional legal services to Plaintiff, by negligently advising and acting or failing to act on behalf of Plaintiff's best interests. Such negligent acts and omissions included, but were not limited to, the following:

- a. Defendant Cahan was negligent and reckless in recommending to Plaintiff a course of action that involved the transfer of his assets at time when judgment creditors were pursuing him for the recovery of judgments for money damages;
- b. Defendant Cahan was negligent and reckless in recommending to Plaintiff a scheme that required the complete and unconditional transfer of almost all of his wealth to his wife, solely for the purpose of avoiding creditors, and not to resolve any actual marital conflict;
- c. Defendant Cahan was negligent and practiced below accepted standards of professional care for recommending the unconditional transfer of assets to his wife, when there were alternative, less

dangerous and risky methods of titling Plaintiff's assets to protect them;

d. Defendant Cahan was negligent and reckless in failing to advise Plaintiff of the risks and dangers of the asset protection scheme that he recommended to Plaintiff, and by failing to recommend or present alternative, less risky means of protecting his assets.

39. Not only was Defendant Cahan's professional conduct negligent, certain actions alleged herein rose to the level of gross negligence in that it constituted a conscious disregard and indifference to the life, safety, and rights of his own client. Upon the a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant Cahan.

40. As a direct and proximate result of the breach of the reasonable duty of care by Defendant Cahan, Plaintiff was damaged. Such damages include, but are not limited to the loss of nearly all of his wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant Cahan for all compensatory damages, together with pre-judgment interest, post-judgment

interest, all costs of court incurred herein, and for such additional and further relief as appears equitable and just.

COUNT II
LIABILITY OF DEFENDANT B & K

41. The allegations contained in paragraphs 1 through 33, and paragraphs 35 through 39 as set forth above are re-alleged in full and incorporated herein by reference.

42. At all times material hereto, Defendant Cahan was acting individually and as an agent, servant, employee, partner and joint venturer, or one or more of them, of Defendant B & P, and was acting within the scope of his employment and with the permission of and consent of Defendant B & P. All of Defendant Cahan's conduct was in furtherance of the interest of Defendant B & P, and for its benefit.

43. All of the negligent acts and omissions alleged herein were committed by Defendant Cahan within the scope of his employment by Defendant B & P and if furtherance of the best interest of his employer, Defendant B & P. Defendant B & P is vicariously liable as the employer of Defendant Cahan for all negligent acts and omissions alleged herein under the doctrine of *respondeat superior*.

44. Furthermore, Defendant B & P is liable for its own negligence acts and omissions for:

- a. Failing to properly supervise Defendant Cahan, so as to prevent harm to the clients of the law firm;
- b. Failing perform a conflict of interest check so as to protect Plaintiff from Defendant Cahan acting as counsel to his wife, and contrary to Plaintiff's interest;
- c. By abandoning the client by withdrawing as his counsel in the New York Adversary Proceeding, leaving him without counsel and the ability to defend his own interest;

45. Not only was Defendant B & P's professional conduct negligent, certain actions alleged herein rose to the level of gross negligence in that it constituted a conscious disregard and indifference to the life, safety, and rights of its own client. Upon the a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant B & P.

46. As a direct and proximate result of the breach of a reasonable duty of care by Defendant B & P, Plaintiff was damaged. Such damages include, but are not limited to the loss of nearly all of his wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant Cahan for all compensatory damages, together with pre-judgment interest, post-judgment interest, all costs of court incurred herein, and for such additional and further relief as appears equitable and just.

COUNT III
BREACH OF FIDUCIARY DUTY
Defendant Cahan

47. The allegations contained in paragraphs 1 through 33 as set forth above are realleged in full and incorporated herein by reference.

48. At all times material hereto, Defendant Cahan served as legal counsel for Plaintiff for the provision of legal services, counseling and advisement. Defendant Cahan owed a fiduciary duty of the utmost loyalty, good faith and candor in undertaking all necessary actions on behalf of and for the benefit of Plaintiff.

49. At all times material hereto, Defendant Cahan owed a fiduciary duty to Plaintiff to disclose any and all material matters bearing on his representation of Plaintiff. At all times material thereto Defendant had a fiduciary obligation to Plaintiff that formed the foundation of the attorney-client relationship.

50. At all times material hereto, Defendant Cahan breached his fiduciary duty owed to Plaintiff by among, but not limited to, the following:

- a. First agreeing to represent Plaintiff and advise him regarding the protection of his assets, and then changing the plan and representing Plaintiff's wife, even though she never sought his representation and advise;
- b. By representing Plaintiff's wife in a transaction that was repugnant to Plaintiff's financial interest;
- c. By failing to disclose to Plaintiff the extreme danger of embarking on the asset protection scheme that Defendant Cahan recommended;
- d. By acting in his own best interest and in the best interest of his law firm, instead of protecting and aiding the financial interest of his own client, Plaintiff James Greiff.

51. Defendant Cahan's breach of fiduciary duty rises to the level of intentional conduct with respect to certain actions alleged in this complaint, in that it constituted a conscious disregard and indifference to the life, safety, and rights of his own client. Upon the a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant Cahan.

52. As a direct and proximate result of the breach of his fiduciary duty by Defendant Cahan, Plaintiff was damaged. Such damages include, but are not

limited to, the loss of nearly all of Plaintiff's wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant Cahan for all compensatory damages, together with pre-judgment interest, post-judgment interest, all costs of court incurred herein, and for such additional and further relief as this court deems just and equitable.

COUNT IV
BREACH OF FIDUCIARY DUTY
Defendant B & P

53. The allegations contained in paragraphs 1 through 32 as set forth above are re-alleged in full and incorporated herein by reference.

54. At all times material hereto, Defendants B &P served as legal counsel for Plaintiff for the provision of litigation services, counseling and advisement. Defendant B & P owed a fiduciary duty of the utmost loyalty, good faith and candor in undertaking all necessary actions on behalf of and for the benefit of Plaintiff.

55. At all times material hereto, Defendant B & P owed a fiduciary duty to Plaintiff to disclose any and all material matters bearing on its representation of

Plaintiff. At all times material thereto Defendant had a fiduciary obligation to Plaintiff that formed the foundation of the attorney-client relationship.

56. At all times material hereto, Defendant B & P breached its fiduciary duty owed to Plaintiff by among, but not limited to, the following:

e. Representing him as a client in the New York Adversary Proceeding and protecting his best interest in that proceeding, while permitting Defendant Cahan to represent his wife in a transaction that was repugnant to Plaintiff's financial well-being;

f. By failing to advise Plaintiff of the extreme conflict of interest that existed between representing him in the New York Adversary Proceeding, while representing his wife in a transaction that was repugnant to Plaintiff's financial well-being.

g. By allowing Defendant Cahan to represent Plaintiff's wife in a transaction that was repugnant to Plaintiff's financial interest;

h. By failing to disclose to Plaintiff the extreme danger of embarking on the asset protection scheme that Defendant Cahan recommended;

i. By acting in the law firm's best interest, instead of protecting and aiding the financial interest of his its client, Plaintiff James Greiff.

57. Defendant B & P's breach of fiduciary duty rises to the level of gross negligence in that certain of its actions alleged herein constituted a conscious disregard and indifference to the life, safety, and rights of his own client. Upon a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant B & P.

58. As a direct and proximate result of the breach of their fiduciary duty by Defendants, Plaintiff has been and will be severely damaged. Such damages include, but are not limited to the loss of nearly all of his wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pending liabilities in the New York Adversary Proceeding, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant B & P for all compensatory damages, together with pre-judgment interest, post-judgment

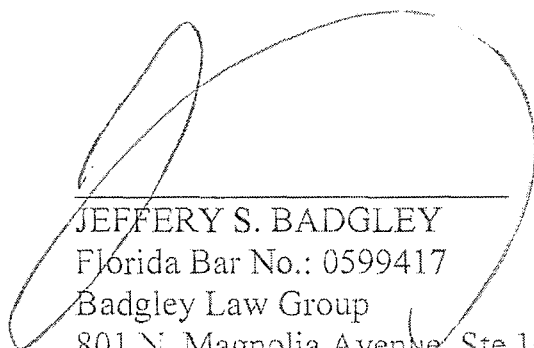
interest, all costs of court incurred herein, and for such additional and further relief as appears equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff demand jury trial for all issues so triable by law.

Dated June 20th, 2013.

Respectfully submitted



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EXHIBIT 2

Exhibit B Defendants With Claims				
	APN	Defendants with MTD	Claim #	Claimant Name
1.	10-04391	Jeane Ungerleider Springer, as trustee and as an individual	013095	JEANE UNGERLEIDER C/O MARKS PANETH & SHRON LLP
2.	10-04391	Jeane Ungerleider Springer, as trustee and as an individual	013096	JEANE UNGERLEIDER
3.	10-04438	Robert Epstein, as beneficiary of the Estate of Seymour Epstein and/or Trusts created by the Last Will and Testament of Seymour Epstein	002110	ROBERT L. EPSTEIN
4.	10-04438	Susan Epstein Gross, as beneficiary of the Estate of Seymour Epstein and/or the Trusts created by the Last Will and Testament of Seymour Epstein	001636	SUSAN I EPSTEIN JACOBS
5.	10-04438	Susan Epstein Gross, as beneficiary of the Estate of Seymour Epstein and/or the Trusts created by the Last Will and Testament of Seymour Epstein	100353	SUSAN I EPSTEIN JACOBS
6.	10-04438	Robert Epstein, as beneficiary of the Estate of Seymour Epstein and/or Trusts created by the Last Will and Testament of Seymour Epstein	012888	ROBERT AND REBECCA EPSTEIN LIVING TRUST
7.	10-04446	Trust Under Agreement Dated 12/6/99 For the Benefit of Walter and Eugenie Kissenger	012028	WALTER B KISSINGER EUGENIE KISSINGER TRUST U/A/D 12/6/99
8.	10-04446	Walter B. Kissinger Revocable Trust	012027	WALTER B KISSINGER TSTEE W B KISSINGER REV TST 10/23/96 C/O WBK ASSOCIATES
9.	10-04446	Walter B. Kissinger	012027	WALTER B KISSINGER TSTEE W B KISSINGER REV TST 10/23/96 C/O WBK ASSOCIATES
10.	10-04446	Eugenie Kissinger	012028	WALTER B KISSINGER EUGENIE KISSINGER TRUST U/A/D 12/6/99
11.	10-04446	Walter B. Kissinger	012028	WALTER B KISSINGER EUGENIE KISSINGER TRUST U/A/D 12/6/99

12.	10-04446	Walter B. Kissinger	012029	KISSINGER FAMILY FOUNDATION INC
13.	10-04446	Walter B. Kissinger Revocable Trust	012028	WALTER B KISSINGER EUGENIE KISSINGER TRUST U/A/D 12/6/99
14.	10-04474	Scott Rechler	012689	SCOTT RECHLER
15.	10-04474	Scott Rechler	012690	SCOTT RECHLER AS AN INVESTOR IN BEACON ASSOC. LLC
16.	10-04474	Gregg Rechler	011081	GREGG RECHLER
17.	10-04539	The Gerald and Barbara Keller Family Trust U/A June 2, 1998	012655	THE GERALD AND BARBARA KELLER FAMILYU TRUST
18.	10-04539	Gerald E. Keller, individually and in his capacity as Trustee of the Gerald and Barbara Keller Family Trust	012655	THE GERALD AND BARBARA KELLER FAMILYU TRUST
19.	10-04539	Barbara Keller, individually and in her capacity as Trustee of the Gerald and Barbara Keller Family Trust	012655	THE GERALD AND BARBARA KELLER FAMILYU TRUST
20.	10-04545	Jerome Goodman, Individually, as trustee for The Jerome Goodman Children's GRAT #1, as Limited Partner of Goodman Capital Partners L.P., and as Beneficiary of The Jerome Goodman Children's GRAT #1	014439	JEROME GOODMAN C/O KEVIN GOODMAN
21.	10-04545	Goodman Capital Partners, L.P.	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
22.	10-04545	The Jerome Goodman Children's GRAT #1	014439	JEROME GOODMAN C/O KEVIN GOODMAN
23.	10-04545	Kevin Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014452	KEVIN GOODMAN-30.88% INTEREST IN GOODMAN CAPITAL PARTNERS, L.P.

24.	10-04545	Peter Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014453	PETER GOODMAN-30.88% INTEREST IN GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
25.	10-04545	Abbey Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014451	ABBEY GOODMAN-30.89% INTEREST IN GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
26.	10-04545	Philip Goodman, as Limited Partner of Goodman Capital Partners L.P.	014454	PHILIP GOODMAN-5.32% INTEREST IN GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
27.	10-04545	Goodman Holdings, Inc., as General Partner of Goodman Capital Partners L.P.	014455	GOODMAN HOLDINGS, INC.-2.03% INTEREST IN GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
28.	10-04545	Jerome Goodman, Individually, as trustee for The Jerome Goodman Children's GRAT #1, as Limited Partner of Goodman Capital Partners L.P., and as Beneficiary of The Jerome Goodman Children's GRAT #1	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
29.	10-04545	Jerome Goodman, Individually, as trustee for The Jerome Goodman Children's GRAT #1, as Limited Partner of Goodman Capital Partners L.P., and as Beneficiary of The Jerome Goodman Children's GRAT #1	013887	JEROME GOODMAN, ACCT OF RETIREMENT ACCTS CUST IRA C/O KEVIN GOODMAN
30.	10-04545	Kevin Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
31.	10-04545	Peter Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
32.	10-04545	Kevin Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014439	JEROME GOODMAN C/O KEVIN GOODMAN
33.	10-04545	Abbey Goodman, as Beneficiary of The Jerome Goodman Children's GRAT #1 and as Limited Partner of Goodman Capital Partners L.P.	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN

34.	10-04545	Philip Goodman, as Limited Partner of Goodman Capital Partners L.P.	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
35.	10-04545	Goodman Holdings, Inc., as General Partner of Goodman Capital Partners L.P.	014456	GOODMAN CAPITAL PARTNERS, L.P. C/O KEVIN GOODMAN
36.	10-04599	Alvin E. Shulman	004558	NTC & CO
37.	10-04599	Alvin E. Shulman	004557	ALVIN E SHULMAN POUROVER TRUST
38.	10-04606	Alvin E. Shulman Pourover Trust	004557	ALVIN E SHULMAN POUROVER TRUST
39.	10-04606	Alvin E. Shulman, in his capacity as Trustee for the Alvin E. Shulman Pourover Trust	004558	NTC & CO
40.	10-04606	Florence W. Shulman Pourover Trust, in its own capacity and in its capacity as a Limited Parter of FAS Partners, L.P.,	004556	FLORENCE SHULMAN POUROVER TST
41.	10-04606	Florence W. Shulman, individually and in her capacity as Trustee of the Florence Shulman Pourover Trust	004555	NTC & CO.
42.	10-04606	Alvin E. Shulman, in his capacity as Trustee for the Alvin E. Shulman Pourover Trust	004557	ALVIN E SHULMAN POUROVER TRUST
43.	10-04614	Robert S Whitman	001836	ROBERT S. WHITMAN
44.	10-04648	Peter D. Kamenstein	002391	PETER D. KAMENSTEIN
45.	10-04660	P.B. Robco, Inc.	001102	P B ROBCO INC C/O PHILLIP B. ROBINSON

46.	10-04768	Placon2	006184	PLACON 2
47.	10-04768	Betty Cohen, in her capacity as a Partner of Placon2 and in her capacity as Executor of the Estate of William R. Cohen	006184	PLACON 2
48.	10-04768	Ronald Cohen, in his capacity as a Partner of Placon2	006184	PLACON 2
49.	10-04768	Robert Plafsky, in his capacity as the personal representative of the Estate of Bernice Plafsky and as Personal Representative of the Estate of Nathan Plafsky	002630	PLAFSKY FAMILY LLC, ROBERT PLAFSKY (TRUSTEE)
50.	10-04768	Estate of William R. Cohen	005647	WILLIAM R. COHEN
51.	10-04768	Estate of William R. Cohen	005870	WILLIAM COHEN
52.	10-04768	Betty Cohen, in her capacity as a Partner of Placon2 and in her capacity as Executor of the Estate of William R. Cohen	005647	WILLIAM R. COHEN
53.	10-04768	Betty Cohen, in her capacity as a Partner of Placon2 and in her capacity as Executor of the Estate of William R. Cohen	005870	WILLIAM COHEN
54.	10-04812	Shari Block Jason	003532	SHARI BLOCK JASON AND SOPHIE OSTERMAN J/T
55.	10-04812	Shari Block Jason	003534	SHARI BLOCK JASON AND SOPHIE OSTERMAN J/T
56.	10-04852	Alvin E. Shulman Pourover Trust	004557	ALVIN E SHULMAN POUROVER TRUST
57.	10-04852	Alvin E. Shulman, individually and in his capacity as trustee of the Alvin E. Shulman Pourover Trust	004558	NTC & CO

58.	10-04852	Alvin E. Shulman, individually and in his capacity as trustee of the Alvin E. Shulman Pourover Trust	004557	ALVIN E SHULMAN POUROVER TRUST
59.	10-04859	Laurie Ann Margolies, individually and in her capacity as Trustee for the Bert Margolies Trust and the Laurie Ann Margolies Childrens Trust dtd 11/1/08	001407	LAURIE ANN MARGOLIES
60.	10-04859	Laurie Ann Margolies Childrens Trust DTD 11/1/08	001407	LAURIE ANN MARGOLIES
61.	10-04859	Nancy Dver Cohen, in her capacity as Trustee for the Bert Margolies Trust	001415	NANCY DVER COHEN
62.	10-04859	Fernando C. Colon-Osorio, M.D.	006606	DR. FERNANDO C. COLON -OSORIO & LAURIE A. MARGOLIES JT WROS
63.	10-04859	Nancy Dver Cohen, in her capacity as Trustee for the Bert Margolies Trust	001893	NANCY DVER COHEN REV TST DTD 11/20/00
64.	10-04889	Robert S. Savin	009439	ROBERT SAVIN
65.	10-04889	Robert S. Savin	015653	ROBERT SAVIN
66.	10-04905	Train Klan, a Partnership	011070	TRAIN KLAN
67.	10-04905	Felice T. Londa, in her capacity as a Partner in Train Klan	010529	JOHN B. TRAIN, MD C/O FELICE T. LONDA, LONDA & LONDA, ESQS.
68.	10-04905	Felice T. Londa, in her capacity as a Partner in Train Klan	010530	JOHN B. TRAI REVOCABLE TRUST C/O FELICE T. LONDA, LONDA & LONDA, ESQS.
69.	10-04905	Claudia Helmig, in her capacity as a Partner in Train Klan	011070	TRAIN KLAN

70.	10-04905	Timothy Landres, in his capacity as a Partner in Train Klan	011070	TRAIN KLAN
71.	10-04905	Jessica Londa, in her capacity as a Partner in Train Klan	011070	TRAIN KLAN
72.	10-04905	Peter Londa, in his capacity as a Partner in Train Klan	011070	TRAIN KLAN
73.	10-04905	Timothy Helmig, in his capacity as a Partner in Train Klan	011070	TRAIN KLAN
74.	10-04905	Wendy Landres, in her capacity as a Partner in Train Klan	011070	TRAIN KLAN
75.	10-04905	Felice T. Londa, in her capacity as a Partner in Train Klan	011070	TRAIN KLAN
76.	10-04912	Laura Ann Smith, as Trustee of the Harry Smith Revocable Living Trust and individually	005136	LAURA ANN SMITH REVOCABLE TRUST
77.	10-04916	Susan Andelman	013046	SUSAN R ANDELMAN
78.	10-04920	Glenhaven Limited	000229	MATHEW L GLADSTEIN
79.	10-04920	Mathew L. Gladstein	000229	MATHEW L GLADSTEIN
80.	10-04979	James M. New Trust Dated 3/19/01	001346	JAMES M NEW TRUST DTD 3/19/01
81.	10-04979	James M. New, individually and in his capacity as Trustee for the James M. New Trust dtd 3/19/01	013190	JAMES M NEW

82.	10-04979	Laura W. New, in her capacity as Trustee for the James M. New Trust dtd 3/19/01	013189	LAURA W NEW
83.	10-04979	James M. New, individually and in his capacity as Trustee for the James M. New Trust dtd 3/19/01	001346	JAMES M NEW TRUST DTD 3/19/01
84.	10-04979	Laura W. New, in her capacity as Trustee for the James M. New Trust dtd 3/19/01	001346	JAMES M NEW TRUST DTD 3/19/01
85.	10-04991	Dino Guiducci, individually and in his capacity as a General Partner of the Guiducci Family Limited Partnership	014611	GUIDUCCI FAMLY LTD. PARTNERSHIP
86.	10-04991	Mary Guiducci, individually and in her capacity as a General Partner of the Guiducci Family Limited Partnership	014623	MARY GUIDUCCI
87.	10-04991	Sandra Guiducci, individually and in her capacity as a General Partner of the Guiducci Family Limited Partnership	009010	SANDRA GUIDUCCI
88.	10-04991	Guiducci Family Limited Partnership	014611	GUIDUCCI FAMLY LTD. PARTNERSHIP
89.	10-04991	Mary Guiducci, individually and in her capacity as a General Partner of the Guiducci Family Limited Partnership	014611	GUIDUCCI FAMLY LTD. PARTNERSHIP
90.	10-04991	Sandra Guiducci, individually and in her capacity as a General Partner of the Guiducci Family Limited Partnership	014611	GUIDUCCI FAMLY LTD. PARTNERSHIP
91.	10-04991	Sandra Guiducci, individually and in her capacity as a General Partner of the Guiducci Family Limited Partnership	004619	DIETRICH W MOSEL 2000 TRUST UAD 2/28/00 CAROL A GUIDUCCI, MOSEL & SANDRA GUIDUCCI TTEES
92.	10-05032	Anita Kirsten, individually, in her capacity as joint tenant, in her capacity as executrix of the Estate of Marvin Kirsten, and in her capacity as trustee under the last will and testament of Marvin Kirsten	000433	MARVIN KIRSTEN AND ANITA KIRSTEN

93.	10-05032	The Estate of Marvin Kirsten	000433	MARVIN KIRSTEN AND ANITA KIRSTEN
94.	10-05037	Barbara L. Savin	003238	BARBARA SAVIN
95.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	009613	ROBERT YAFFE
96.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	009612	ROBERT YAFFE
97.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	100151	ROBERT YAFFE
98.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	100113	ROBERT YAFFE
99.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	100152	ROBERT YAFFE
100.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	100138	ROBERT YAFFE
101.	10-05051	Robert Yaffe, individually, and in his capacity as Trustee of Bevro Realty Corp. Defined Benefit Pension Plan	100141	ROBERT YAFFE
102.	10-05102	Carolyn Jean Benjamin, in her capacity as executrix of the Estate of Robert A. Benjamin, as beneficiary of the Individual Retirement Account for the benefit of Robert A. Benjamin, and as beneficiary under the Last Will and Testament of Robert A. Benjamin	000542	CAROLYN JEAN BENJAMIN
103.	10-05102	Carolyn Jean Benjamin, in her capacity as executrix of the Estate of Robert A. Benjamin, as beneficiary of the Individual Retirement Account for the benefit of Robert A. Benjamin, and as beneficiary under the Last Will and Testament of	000078	CAROLYN JEAN BENJAMIN

		Robert A. Benjamin		
104.	10-05104	The Gloria Albert Sandler and Maurice Sandler Revocable Trust	005563	MAURICE SANDLER & GLORIA SANDLER REV LIV TRUST
105.	10-05104	Gloria Albert Sandler, individually as grantor and beneficiary of and in her capacity as Trustee of The Gloria Albert Sandler and Maurice Sandler Revocable Trust	005563	MAURICE SANDLER & GLORIA SANDLER REV LIV TRUST
106.	10-05104	Maurice Sandler, individually as grantor and beneficiary of and in his capacity as Trustee of The Gloria Albert Sandler and Maurice Sandler Revocable Trust	005564	NTC & CO FOR MAURICE SANDLER ITA
107.	10-05104	The Gloria Albert Sandler and Maurice Sandler Revocable Trust	005564	NTC & CO FOR MAURICE SANDLER ITA
108.	10-05104	Maurice Sandler, individually as grantor and beneficiary of and in his capacity as Trustee of The Gloria Albert Sandler and Maurice Sandler Revocable Trust	005563	MAURICE SANDLER & GLORIA SANDLER REV LIV TRUST
109.	10-05106	Stony Brook Foundation, Inc	001620	KAROL KAIN GRAY
110.	10-05116	Leonard J. Oguss Trust,	010181	LEONARD J OGUSS, TRUSTEE UTD 6/11/86
111.	10-05116	Jane L. Oguss, as Trustee and Individually	010183	JANE L OGUSS
112.	10-05116	Jane L. Oguss, as Trustee and Individually	015654	JANE L OGUSS
113.	10-05116	Leonard J. Oguss Trust,	002280	LEONARD J. OGUSS
114.	10-05127	Dino Guiducci	013879	ATWOOD MANAGEMENT CORP C/O DINO GUIDUCCI

115.	10-05127	Mary Guiducci	014623	MARY GUIDUCCI
116.	10-05127	Atwood-Regency Profit Sharing Plan f/k/a Atwood-Regency Defined Benefit Plan & Trust	015388	ATWOOD REGENCY PROFIT SHARING PLAN
117.	10-05127	Atwood-Regency Profit Sharing Plan f/k/a Atwood-Regency Profit Sharing Plan & Trust a/k/a Atwood Regency Money Purchase Pension Plan	014679	ATWOOD REGENCY PROFIT SHARING PLAN
118.	10-05128	Bruce Goodman, in his capacity as a general Partner of JABA Associates LP	008899	BRUCE L. GOODMAN
119.	10-05135	Donald Rechler, as Trustee for Trust F/B/O Mark Rechler, Trust F/B/O Glenn Rechler U/W/O William Rechler, Trust F/B/O Mitchell Rechler, and Trust F/B/O Todd Rechler	010632	TRUST FBO MARK RECHLER
120.	10-05135	Todd Rechler, individually, and in his capacity as Partner of Reckson Generation	011093	RECKSON GENERATION
121.	10-05135	Reckson Generation	011093	RECKSON GENERATION
122.	10-05135	Trust FBO Mitchell Rechler	010467	TRUST FBO MITCHELL RECHLER
123.	10-05135	Trust FBO Mark Rechler	010632	TRUST FBO MARK RECHLER
124.	10-05135	Mitchell Rechler, individually, and in his capacity as Partner of Reckson Generation	004178	MITCHELL RECHLER
125.	10-05135	Mark Rechler, individually, and in his capacity as Partner of Reckson Generation	004305	MARK RECHLER
126.	10-05135	Glenn Rechler, individually, and in his capacity as Partner of Reckson Generation	007218	GLENN RECHLER

127.	10-05135	Glenn Rechler, individually, and in his capacity as Partner of Reckson Generation	007504	GLENN RECHLER
128.	10-05135	Trust FBO Glenn Rechler U/W/O William Rechler	010466	TRUST FBO GLENN RECHLER
129.	10-05135	Gregg Rechler, individually, and in his capacity as Partner of Reckson Generation	011081	GREGG RECHLER
130.	10-05135	Scott Rechler, individually, and in his capacity as Partner of Reckson Generation	012689	SCOTT RECHLER
131.	10-05135	Donald Rechler, as Trustee for Trust F/B/O Mark Rechler, Trust F/B/O Glenn Rechler U/W/O William Rechler, Trust F/B/O Mitchell Rechler, and Trust F/B/O Todd Rechler	010466	TRUST FBO GLENN RECHLER
132.	10-05135	Donald Rechler, as Trustee for Trust F/B/O Mark Rechler, Trust F/B/O Glenn Rechler U/W/O William Rechler, Trust F/B/O Mitchell Rechler, and Trust F/B/O Todd Rechler	010467	TRUST FBO MITCHELL RECHLER
133.	10-05135	Donald Rechler, as Trustee for Trust F/B/O Mark Rechler, Trust F/B/O Glenn Rechler U/W/O William Rechler, Trust F/B/O Mitchell Rechler, and Trust F/B/O Todd Rechler	004180	WILLI RECHLER TRUST C/O MITCHELL RECHLER
134.	10-05135	Glenn Rechler, individually, and in his capacity as Partner of Reckson Generation	011093	RECKSON GENERATION
135.	10-05135	Gregg Rechler, individually, and in his capacity as Partner of Reckson Generation	011093	RECKSON GENERATION
136.	10-05135	Mark Rechler, individually, and in his capacity as Partner of Reckson Generation	011093	RECKSON GENERATION
137.	10-05135	Mitchell Rechler, individually, and in his capacity as Partner of Reckson Generation	011093	RECKSON GENERATION

138.	10-05135	Scott Rechler, individually, and in his capacity as Partner of Reckson Generation	011093	RECKSON GENERATION
139.	10-05135	Mitchell Rechler, individually, and in his capacity as Partner of Reckson Generation	010467	TRUST FBO MITCHELL RECHLER
140.	10-05135	Mitchell Rechler, individually, and in his capacity as Partner of Reckson Generation	004180	WILLI RECHLER TRUST C/O MITCHELL RECHLER
141.	10-05135	Mark Rechler, individually, and in his capacity as Partner of Reckson Generation	010632	TRUST FBO MARK RECHLER
142.	10-05135	Glenn Rechler, individually, and in his capacity as Partner of Reckson Generation	010466	TRUST FBO GLENN RECHLER
143.	10-05150	Plafsky Family LLC Retirement Plan	002629	PLAFSKY FAMILY LLC
144.	10-05150	Robert Plafsky, in his capacity as Trustee for the Plafsky Family LLC Retirement Plan	002630	PLAFSKY FAMILY LLC, ROBERT PLAFSKY (TRUSTEE)
145.	10-05150	Robert Plafsky, in his capacity as the personal representative of the Estate of Nathan Plafsky	002630	PLAFSKY FAMILY LLC, ROBERT PLAFSKY (TRUSTEE)
146.	10-05150	Plafsky Family LLC Retirement Plan	002630	PLAFSKY FAMILY LLC, ROBERT PLAFSKY (TRUSTEE)
147.	10-05154	Howard Schupak, individually and in his capacity as Trustee for the Blue Bell Lumber and Moulding Company, Inc. Profit Sharing Plan	002128	NTC & CO. FBO HOWARD M. SCHUPAK (098439)
148.	10-05154	Nathan Schupak, individually and in his capacity as Trustee for the Blue Bell Lumber and Moulding Company, Inc. Profit Sharing Plan	002510	NATHAN SCHUPAK
149.	10-05154	Paul Schupak	006979	PAUL SCHUPAK

150.	10-05154	Paul Schupak	002008	NTC & CO.
151.	10-05196	Irene Whitman 1990 Trust U/A DTD 4/13/90	010281	IRENE WHITMAN 1990 TST U/A DTD 4/13/90 JAMES M NEW AND IRENE WHITMAN, TRUSTEE
152.	10-05196	James M. New, in his capacity as Trustee of the Irene Whitman 1990 Trust	013190	JAMES M NEW
153.	10-05196	Laura New, in her capacity as executrix of the Estate of Irene Whitman	013189	LAURA W NEW
154.	10-05196	James M. New, in his capacity as Trustee of the Irene Whitman 1990 Trust	001346	JAMES M NEW TRUST DTD 3/19/01
155.	10-05196	James M. New, in his capacity as Trustee of the Irene Whitman 1990 Trust	010281	IRENE WHITMAN 1990 TST U/A DTD 4/13/90 JAMES M NEW AND IRENE WHITMAN, TRUSTEE
156.	10-05196	Laura New, in her capacity as executrix of the Estate of Irene Whitman	010281	IRENE WHITMAN 1990 TST U/A DTD 4/13/90 JAMES M NEW AND IRENE WHITMAN, TRUSTEE
157.	10-05217	Edward I. Speer, individually and in his capacity as joint tenant	008525	EDWARD I SPEER CPA RETIREMENT PLAN TRUST
158.	10-05217	Edward I. Speer, individually and in his capacity as joint tenant	009108	EDWARD I SPEER & MARION SPEER J/T WROS
159.	10-05217	Marion Speer, individually and in her capacity as joint tenant	009108	EDWARD I SPEER & MARION SPEER J/T WROS
160.	10-05259	Eunice Chervony Lehrer	007019	EUNICE C LEHRER

161.	10-05259	Eunice Chervony Lehrer	002195	EUNICE CHERVONY
162.	10-05309	Shirley Blank	003843	SHIRLEY BLANK
163.	10-05309	Ilene May	003844	ILENE MAY
164.	10-05309	Allan Wilson	008342	ALLAN WILSON
165.	10-05309	Allan Wilson	015440	ALLAN WILSON
166.	12-01706	Estate of Nathan Schupak	002510	NATHAN SCHUPAK
167.	12-01706	Howard Schupak, in his capacity as executor of Estate of Nathan Schupak	002510	NATHAN SCHUPAK
168.	12-01706	Bella Schupak	003383	BELLE SCHUPAK

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter of:

BERNARD L. MADOFF,

Main Case No.

Debtor.

09-11893-brl

-----x

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

- against -

Adv. Case No.

08-01789-brl

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

Defendant.

-----x

IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B,

Plaintiff,

- against -

Adv. Case No.

10-05328-brl

MORGAN, INDIVIDUALLY, AND AS GUARDIAN OF A.V.M., et al.,

Defendant.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York

June 1, 2011
10:03 AM

B E F O R E:

HON. BURTON R. LIFLAND
U.S. BANKRUPTCY JUDGE

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FIFTH Application of Windels Marx Lane & Mittendorf, LLP for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred (ADV 08-01789-br1) (cc-4023) (Adj. from 5/12/11)

APPLICATION of Werder Vigano as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4031) (Adj. from 5/12/11)

APPLICATION of Schifferli Vafadar Sivilotti as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered (4034) (Adj. from 5/12/11)

APPLICATION of Attias & Levy as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4024) (Adj. from 5/12/11)

APPLICATION of Eugene F. Collins as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4025) (Adj. from 5/12/11)

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APPLICATION of Taylor Wessing as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4026) (Adj. from 5/12/11)

APPLICATION of Williams Barristers & Attorneys as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4027) (Adj. from 5/12/11)

FEE Application of SCA Creque as Special Counsel (4032) (Adj. from 5/12/11)

SIXTH Application of the Trustee and Baker & Hostetler LLP for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4022) (Adj. from 5/12/11)

APPLICATION of Young Conaway Stargatt & Taylor LLP as Special Counsel to the Trustee for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses (4033) (Adj. from 5/12/11)

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APPLICATION of Schiltz & Schiltz as Special Counsel to the
Trustee for Allowance of Interim Compensation for Services
Rendered and Reimbursement of Actual and Necessary Expenses
(4028) (Adj. from 5/12/11)

APPLICATION of Higgs & Johnson (formerly Higgs Johnson Truman
Bodden & Co.) as Special Counsel to the Trustee for Allowance
of Interim Compensation for Services Rendered and Reimbursement
of Actual and Necessary Expenses (4029) (Adj. from 5/12/11)

APPLICATION of Kugler Kandestin, LLP as Special Counsel to the
Trustee for Allowance of Interim Compensation for Services
Rendered and Reimbursement of Actual and Necessary Expenses
(4030) (Adj. from 5/12/11)

MOTION of the Trustee for Entry of Litigation Protective Order
(cc-3819) (Adj. from 3/16/11, Adj. from 3/31/11, Adj. from
4/28/11, Adj. from 5/24/11)

MOTION for an Order Pursuant to Federal Rule 25(a)(1)
Substituting Defendant and Continuing Action (ADV 10-05328-br1)
(Adj. from 5/25/11)

Transcribed by: Sara Davis

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A P P E A R A N C E S :

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BY: NEIL STEINER, ESQ.

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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
Bernard L. Madoff
45 Rockefeller Plaza
New York, NY 10111

BY: JUDY A. SELBY, ESQ.

DAVID J. SHEEHAN, ESQ.

SEANNA BROWN, ESQ.

IRVING H. PICARD, ESQ.

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BECKER & POLIAKOFF PA

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BY: HELEN DAVIS CHAITMAN, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Be seated, please.

3 THE CLERK: SIPC v. BLMIS.

4 MR. SHEEHAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. SHEEHAN: We have, obviously, a number of matters
7 on here this morning and I would li -- I'm very happy to report
8 to Your Honor that we've been working in anticipation of Your
9 Honor arriving on the bench and I think we've worked out
10 everything with the LPL so we need not argue any of that this
11 morning. But, I've said to my colleagues --

12 THE COURT: Shall I leave, then? Is that all?

13 MR. SHEEHAN: We're all done?

14 THE COURT: Okay.

15 MR. SHEEHAN: I said to my colleagues who were
16 gracious enough to work this out with us that we should, of
17 course, take advantage to putting it on the record so that
18 their trip to court is somewhat worthwhile. And we can then
19 capture that in a revised order which we'll submit to Your
20 Honor.

21 The first one is an objection that was filed by Mr.
22 Wiles. His was in connection with paragraph 4(e); Your Honor
23 may remember that. What he has suggested is some additional
24 language which I'm going to ask him to step to the podium and
25 read to us, because I don't remember exactly what we agreed to,

1 but he has it. And then we can just incorporate that into the
2 order.

3 Mr. Wiles, if I could?

4 MR. WILES: Thank you. Good morning, Your Honor.

5 THE COURT: We're dealing now with the litigation
6 protective order?

7 MR. WILES: Beg your pardon? Yes, yes. This is the
8 litigation protective order.

9 THE COURT: Go ahead.

10 MR. WILES: The -- what we've agreed to do is to add
11 to paragraph 4 the following two sentences. "The items listed
12 in this paragraph shall not be treated as confidential material
13 under the authority granted by this order. However nothing in
14 this paragraph is intended as a ruling on the extent to which
15 any party may claim that any particular information is
16 confidential to object to the production of such information or
17 to seek an additional protective order with respect to specific
18 information."

19 And we've agreed to add that and that resolves my
20 objection. Thank you.

21 THE COURT: I have no problem, although I wonder
22 reading all the versions and the objection, the right to come
23 back and raise the issue is clearly in the order that was going
24 to be submitted to the Court. So I really feel it's a little
25 bit of much ado about nothing, but it did take up a good deal

1 of my time.

2 MR. SHEEHAN: Sorry about that, Your Honor. We tried
3 to work it all out in advance.

4 We have one other objection. It's from the Dechert
5 firm representing Mr. Merkin and, again, I asked counsel if he
6 wants to step forward and state for the records what we'd agree
7 to and then we can incorporate it in the order.

8 MR. STEINER: Thank you, Your Honor. Neil Steiner
9 from Dechert. With respect to paragraph 9 of the order which
10 provides that if the trustee received a document request for
11 interrogatory such as the ones we've served as defendants in an
12 adversary proceeding, that would require the production of
13 information that's been produced to them by other parties,
14 pursuant to Rule 2004 or in other adversary proceedings,
15 they'll give notice as drafted if the producing party in such
16 other action doesn't consent, it's within the discretion of the
17 trustee to raise the issue with the Court or not. To resolve
18 that, we've agreed that paragraph 9 in the middle of page 5
19 that starts, "If the producing party objects to the
20 redesignation, the receiving party" and then we would insert
21 the words 'or any party in interest in an individual adversary
22 proceeding' and then it continues "may, consistent with the
23 local Bankruptcy Rules, request a conference to raise the issue
24 with the Court."

25 There are two other provisions in 10(f) and 12. 10(f)

1 relates to the use of documents in depositions if they haven't
2 been produced because of a confidentiality designation. and
3 then 12 relates to the trustee's obligation to notify producing
4 parties who've designated things as confidential where, I think
5 we've agreed that we would work out some language either for
6 the order or specifically with respect to our adversary -- our
7 individual adversary proceeding. We've left the agreement with
8 Ms. Selby is that we'd try to work that out in the next day or
9 so and to the extent necessary, submit it for your approval.

10 THE COURT: Does anyone want to be heard?

11 The requests are granted.

12 MR. SHEEHAN: Thank you, Your Honor.

13 Your Honor, the balance of the calendar this morning
14 deals with fee applications by the trustee and his counsel,
15 foreign counsel and confluence counsel. None of them are
16 objected to, except that of the trustee and Baker, Hostetler
17 counsel to trustee. What I would propose we do is, if I could,
18 Your Honor, just in summary fashion go through the unopposed
19 just to put them on the record and give a brief statement as to
20 what they involved. And then submit that all to Your Honor and
21 hear if anyone wants to object here in the courtroom. If
22 that's okay with you?

23 THE COURT: Go ahead.

24 MR. SHEEHAN: Your Honor, first of all, we have --
25 I'll do the foreign counsel. As Your Honor knows, we've

1 instituted over 1,000 lawsuits and we're in thirty different
2 jurisdictions, which requires us -- the trustee to go out and
3 find other counsel to assist us in these endeavors.

4 I'll start off with Bermuda. That's the Williams
5 Barristers firm in Bermuda. There is a substantial sum of
6 money, around 100 million dollars, which we have managed to,
7 with the agreement of the liquidators in Kingate to hang on to
8 that money pending resolution among the parties of their
9 various claims to those funds. Needless to say, in that
10 endeavor, we need the assistance of local counsel.

11 We sought the approval which this Court gave to
12 Williams' retention. They have worked very closely with us
13 through this entire effort. We have a number of significant
14 matters occurring in Kingate on a fairly routine basis, so
15 their application is before Your Honor and is unopposed.

16 The next is the British Virgin Islands. That's the
17 SCA Creque firm. Mr. Olympitis is our counsel there. As Your
18 Honor also knows, Kingate, Fairfield Sentry and a number of
19 other feeder funds were incorporated in BVI. As a result, we
20 appear there regularly to protect the causes of action
21 instituted by the trustee there as parallel protective actions
22 as well as actions here in this court. And we work, again,
23 very closely with them in putting together bills of
24 particulars, extensions and numerous other activities to
25 protect the interests of the estate.

1 Next is Canada. There it's principally work performed
2 by the Kugler Kandestin firm in connection with service of
3 process issues, Your Honor. And that's why their bill is only
4 2,500 hours and change.

5 The next firm that is -- it's in the Cayman Islands,
6 this is Higgs & Johnson. Cayman Islands, again, is a place of
7 incorporation for many of the feeder funds. Needless to say,
8 we also appear there in several actions that we've instituted,
9 most prominently the Hawley action where we have filed a
10 protective action in addition to the action that was filed here
11 in this court. They assist us in that matter on a daily basis.

12 The next one is the one that is probably the most
13 prominent and that's Taylor Wessing. Taylor Wessing is the
14 firm in London that assists us across the board, throughout the
15 islands, which are subject to commonwealth law, as well as in
16 the course of London in connection with actions that we have
17 instituted there. There are several actions.

18 One is the action against the directors of MSIL, the
19 London branch, if you will, of the fraudulent scheme. And
20 then, in addition to that, we have an action filed against
21 Sonja Kohn as a protective action in light of the obvious
22 jurisdictional and extraterritoriality issues that we'll
23 encounter there. I must say, that's almost a daily experience
24 working with counsel there and they have contributed greatly to
25 the success we've achieved to date.

1 THE COURT: Isn't there a protocol enforced with
2 respect to the London --

3 MR. SHEEHAN: Yes, there is, Your Honor. We've
4 entered into a protocol with the joint liquidator, Mr. Akres,
5 and have worked closely with him in prosecuting all these
6 lawsuits.

7 Next is the Attias, Levy firm. This is the firm in
8 Gibraltar; Your Honor has great familiarity with this. This is
9 the Vizcaya Sous (ph.) Bank Safra matter. We found out very
10 early on there were seventy-five million dollars sitting in
11 Gibraltar. We're halfway home to that; that money is now here
12 in the United States. We brought, as Your Honor knows, default
13 actions for judgments against the parties there. After the
14 Rubin decision came out of the British courts allowing default
15 judgments in bankruptcy courts to be enforced in the British
16 courts, they decided to come here, as Your Honor knows, vacate
17 the default and they're now going to litigate those issues here
18 in the United States before Your Honor.

19 So I would have to say that the Attias, Levy firm has
20 done yeoman work in terms of supporting us in that effort,
21 although it's not finished yet. We're well advanced in where
22 we're heading with that litigation.

23 Next is Ireland, it's the Eugene F. Collins firm.
24 There are a number of feeder funds that operated through Irish
25 facilities that were provided there, most prominently being

1 Thema International. We are looking to recover at least 380
2 million dollars that passed through those funds in Ireland and
3 that firm has been assisting us in that effort as well.

4 Luxembourg. Schultz & Schultz (sic). This is a firm
5 that has been working with us, again, with regard to the
6 actions we've instituted against UBS and Luxalpha and there are
7 other Luxembourg-based feeder funds and they've assisted us in
8 getting documents, discovery and access to the local
9 authorities.

10 Then, lastly for foreign firms, we have the
11 Switzerland firm of Werder and Vigano. Werder and Vigano is
12 assisting us with regard to Sonja Kohn. As Your Honor may be
13 aware, Sonja Kohn claims citizenship in Switzerland and
14 Austria. She's not yet determined which she's going to advance
15 before the courts, but we need the assistance of Swiss counsel
16 to work with them and the local authorities in regard to those
17 issues.

18 Your Honor, all those applications are before Your
19 Honor. I am aware of no objections to them and I would
20 therefore move for their approval.

21 THE COURT: Does anyone want to be heard?

22 Your application is granted.

23 MR. SHEEHAN: Thank you, Your Honor.

24 There are, of course, two other firms that have
25 submitted applications here, Your Honor. One has been with the

1 case for a very substantial period of time. That's the firm of
2 Windels, Marx. As you know, Alan Nisselson was in this case as
3 the Chapter 7 trustee for Mr. Madoff. He continues in that
4 capacity pursuant to an order of Your Honor. We have, in
5 addition, utilized the Windels, Marx firm for conflicts counsel
6 on numerous matters involving the Madoff family, in particular,
7 and many of their investment vehicles.

8 I've worked closely with them. Howard Simon and Mr.
9 Nisselson are here in court today as partners representing that
10 firm. Their work has been outstanding, been very, very helpful
11 to the trustee and we've achieved some significant results by
12 virtue of their efforts.

13 The other firm that's here this morning is counsel to
14 the trustee in a conflicts capacity is Young, Conaway. This
15 case being as pervasive as it is, eventually Windels, Marx had
16 a conflict. And we needed to get the assistance of other
17 counsel so we reached out to Young, Conaway. Young, Conaway
18 has stepped up; they've worked very closely with us on a number
19 of matters that they instituted prior to the December 11th
20 date. And we find their work to have been exemplary as well.

21 I know of no objection to either one of these
22 applications and would move both of them for approval as well,
23 Your Honor.

24 THE COURT: I'm familiar with a lot of their
25 activities, visibly before the Court. Unless somebody wants to

1 be heard, I'm prepared to grant the application.

2 Apparently not.

3 MR. SHEEHAN: Thank you, Your Honor.

4 That leaves us with -- this morning with the
5 application of the trustee and I want to apologize for the
6 absence of the trustee who has sent me an e-mail that there's
7 some kind of problem on the E train -- or not E train, 6 train.
8 Trustee travels by subway and he's not here. So, he would like
9 to have addressed the Court and I may even interrupt what I'm
10 about to say to allow him -- or he can speak at the end of my
11 presentation, Your Honor.

12 The --

13 THE COURT: I think I can understand some of the
14 problems. I couldn't get home last night, either, by surface
15 transportation or subway.

16 MR. SHEEHAN: Well, the e-mail said there was an
17 unauthorized person on the tracks.

18 THE COURT: That's not to say that I slept here last
19 night.

20 MR. SHEEHAN: That's all right, Judge. I just know it
21 wasn't Mr. Picard.

22 Anyway, Your Honor, we have before us this morning on
23 objection to the sixth interim fee application of the trustee
24 and his counsel. And there are a number of issues that have
25 been raised before by Ms. Chaitman on behalf of her clients.

1 but I believe that, perhaps -- and I beg the Court's indulgence
2 to make something of -- more than just a perfunctory
3 presentation to Your Honor and not that we're normally
4 perfunctory, but I wanted to go beyond what, perhaps, would
5 normally be required here. Especially given the statute as
6 written.

7 The thrust of what Ms. Chaitman seems to be suggesting
8 is that this trustee has mismanaged the estate -- has actually
9 done a terrible job, shouldn't be paid virtually at all. And
10 last night, we were accused of violating the Constitution; we
11 are now un-Constitutional, as well. I don't speak of those
12 things lightly and I don't mean to be facetious when I say
13 them.

14 I do raise this, though. We are in this case for 902
15 days as of today. 902 days in which this trustee, based on the
16 7.6 million dollars subject to appeals by Ms. Chaitman, has
17 therefore garnered to the estate 8 million dollars a day. I
18 think we've done a good job. I think that in and of itself
19 speaks volumes. But how do you get there? How do you get to
20 eight million dollars a day? And lots more in the offing,
21 which this Court will be hearing about very, very shortly and
22 we'll add significantly to that total.

23 How you get there is to do all of the hard work. And
24 out application is just for four months ending in January. But
25 it goes back in a real sense; it encompasses all the work that

1 we -- transpired beforehand. You don't file over 1,000
2 lawsuits before the statute runs in December of 2010 without
3 intense efforts by a big team of people. That's just focusing
4 on the litigation. On top of that, as Ms. Chaitman points out,
5 we had 16,000 claims. But we should break that down.

6 16,000 claims, the vast majority of those being
7 indirects, as we call them, or customers without an account.
8 People invested in feeder funds. And the feeder funds
9 themselves. There's a pending motion before Your Honor on that
10 very subject matter.

11 We denied all of those but it's been misunderstood,
12 misapplied again; misleading information is supplied to people.
13 The press, gullible as it is, eats it up; doesn't understand
14 what's going on. Your Honor knows that when we approved a
15 feeder fund in this particular case for settlement, what will
16 happen. Their claim will be allowed as part of that
17 settlement. They will receive a distribution in cases that
18 will be significant; billions of dollars will be paid to those
19 feeder funds. And those feeder funds in turn, will pay those
20 thousands of investors.

21 Our job is made more difficult by that because what we
22 have to do is assure ourselves that when we make those payments
23 to those feeder funds, that the money goes to those investors.
24 And we've worked assiduously with every one of those feeder
25 fund counsel to ensure that that takes place. And it will in

1 connection with all those settlements.

2 To suggest they've been discarded, abandoned, not part
3 of this proceeding is hogwash and Ms. Chaitman knows it.
4 That's the sad part. She knows exactly what's going on. She's
5 an experienced bankruptcy practitioner. Think of that. She
6 and how many others are experienced bankruptcy practitioners.
7 Hundreds in this case. Hundreds. Some of the best law firms
8 in the city, in the country, in the world are in this case.
9 Not one of them has ever objected to these fees. Ms.
10 Chaitman's objected to every one, based on spurious information
11 and misinformation.

12 And following up on -- when we got into the case, Your
13 Honor knows we retained, and those efforts are also criticized
14 by Ms. Chaitman, forensic accountants at FTI, and now
15 AlixPartners, to assist as a two-pronged effort; FTI focusing
16 on the litigation which resulted in all those lawsuits,
17 AlixPartners on evaluating the flip side of that coin, the
18 customer claims. Now, we've finished almost all of them. The
19 only reason there's a significant difference between the amount
20 of claims approved and the amount of dollars involved is
21 because the bulk of the dollars are in the feeder funds.

22 Out of the 17.6 billion dollars of claims that were
23 filed, only 2 billion of those were outside the feeder funds.
24 The rest are all feeder fund dollars. That's what we're
25 talking about here. So the two billion dollars that's out

1 there that we could distribute, if in fact we had the ability
2 to do so, we could fully satisfy a lot of people very, very
3 quickly. There's only one thing holding that up and that's the
4 appeal in the Picard matter. That's the only thing holding it
5 up. It has nothing to do with what the trustee did; it has
6 everything to do with that appeal.

7 So at the end of the day, what we've had is tremendous
8 efforts made by many people here, obviously demonstrated by the
9 fee applications where lots and lots of lawyers are involved.
10 And I agree with that. But this is a one in a lifetime
11 enterprise that we're involved in here. You don't just show up
12 in court without doing all the hard work that's necessary to
13 figure out exactly what went on. Ms. Chaitman complains in
14 another motion which Your Honor will hear shortly that we don't
15 report enough, that people don't really know what's going on.

16 I have a very good recommendation, Ms. Chaitman: Read
17 the complaints. They tell a story. Every one of those
18 complaints tells an unbelievable story, an unbelievable story
19 of the fraud that was perpetrated by Mr. Madoff but not just as
20 a Jewish affinity fraud among his relatives and his friends,
21 which of course he did do and had no conscience about. But in
22 addition to that, he became part of the financial fabric of the
23 international financial community. I brought today to court a
24 chart. All right? This is a chart that's public record;
25 that's why it's there. It's been filed in the RICO action; we

1 filed it in the matter against Sonja Kohn. And what I'd like
2 to say -- and if I may just approach the chart, Your Honor?

3 Nobody gave us this chart. We had to do all the work
4 to find out where all that money went. And you start over
5 here, you start at Sonja Kohn and all of her colleagues and you
6 travel through all of the avenues all the banks, all the funds,
7 back and forth through BLMIS, Mr. Madoff, and back out again
8 and all the money out through Matachi, Austria and UNICRI
9 (sic). That's one case. That took an enormous amount of
10 effort to trace the billions of dollars that were flowing in
11 and out of BLMIS and those billions of dollars could only be
12 what? In a Ponzi scheme, they are customer property; they
13 cannot be anything else.

14 This is one chart. I could have presented, Your
15 Honor, thirty of these, all of them as complex as this one, all
16 of them involving an enormous array of activities by Mr. Madoff
17 over a period of decades. Unraveling that fraud, bringing it
18 to the attention of the courts, litigating those issues is
19 exactly where all that time, money and effort has been spent.
20 And I submit, with great results, as noted at the outset and
21 the money collected by the trustee.

22 Now, in addition to all of that litigation, we have
23 all of the other litigation. And the trustee gets criticized
24 for that, too, because that's the so-called good faith
25 litigation. Individuals who got other people's money,

1 basically the people that Mrs. (sic) Chaitman represents, those
2 are people -- and you know, it gets bantered about too
3 casually. Other people's money. You know, there's two classes
4 of victims, the losers and the winners which have become
5 defined by virtue of the trustee's method of calculating that
6 equity. But those winners and those losers actually share a
7 common bond. They both were victimized. They both were
8 defrauded. The only difference is, is that the net winners Ms.
9 Chaitman represents got their money back and then some. And
10 the people that the trustee is trying to help, the net losers,
11 never got their money back. Those 1,000 avoidance suits
12 represent 4.6 billion dollars.

13 Does the trustee walk from that? Does he say, you
14 know, those people got defrauded, it's not fair, we should just
15 forget it? Fine. That sounds good. What's the problem with
16 that? Well, the poor losers who didn't get the 4.6 billion
17 dollars back are never going to get it. It can't come from
18 anywhere, the statute doesn't provide for that. That's been
19 litigated over and over again by Ms. Chaitman. She loses it
20 every time. It's now in the circuit; that's where it should
21 be. And at the end of the day, I'm confident that Your Honor's
22 decision will be affirmed in that regard.

23 But more to the point, how do we just ignore that?
24 How do we tell all those people out there who are owed those
25 billions of dollars, "We wrote it off"? We can't do that. We

1 can't fulfill our obligations here and do that. So as a result
2 of all of that work, what we do have is lawsuits of 988, to be
3 precise, against good faith, 34 against bad faith. What do we
4 call bad faith? The Madoff family. All right? They're
5 definitely bad faith candidates; we've alleged that against
6 them. Your Honor's familiar with that. And numerous other
7 insiders and employees, adding up to thirty-four lawsuits.
8 Then we had the feeder funds, that's twenty-nine banks. And
9 then we have subsequent transferees that we've already started
10 filing lawsuits on, filed sixty since December 11th, began
11 subsequent transferees we've now discovered as we chase this
12 money.

13 I want to pause here for another comment made by Ms.
14 Chaitman about these lawsuits. Again, a misstatement and
15 gullibly absorbed by the news that somehow we've been found not
16 to have standing. Wrong. Not even close. What's happened is,
17 is that as Your Honor well knows there have been several --
18 more than one now, applications to withdraw the reference to
19 you with regard to the decisions on those issues. Judge Rakoff
20 and Judge McMahon decided there are federal issues there that
21 would be better determined by an Article III judge. In their
22 discretion, they made that decision. We disagree respectfully.
23 But we move on.

24 They didn't decide anything substantively. There are
25 two motions -- one motion, actually, pending by HSBC for

1 dismissal; we're replying to that next week. She could be
2 forecasting the outcome down the road, but it didn't happen
3 yet. And we're hopeful, very hopeful, that we will be able to
4 sustain those causes of action and try them here. As Judge
5 Rakoff said, whatever he decides is coming back here. And
6 my -- our hope, our sincere hope is all those causes of action
7 remain viable and that we do try them here.

8 So it's a misstatement. We didn't waste time. We
9 brought all this to the attention to the Court because it won't
10 be a waste of time in any event. We have significant avoidance
11 actions against all of those defendants in the billions of
12 dollars. That's why they come to the table and talk to us.
13 That's why we've achieved these settlements. Because we have
14 done this credibly. We don't walk into some of the biggest law
15 firms in the city and say give us the money. We give them a
16 detailed picture of the wrongdoing that their clients engaged
17 in from our perspective, based on hard facts, hard accounting
18 information and then in a very persuasive way, that we believe
19 in complaints to be decided by the Court.

20 As I said, nobody gave us that chart. Nobody gave us
21 any of this. We've put it all together.

22 One of the other items that keeps recurring in Ms.
23 Chaitman's papers is, is that if she loses a motion, she
24 reargues it here. We've heard about Levy again; that's on
25 appeal. We've heard about Picower; that's on appeal. That,

1 somehow, in her mind, is a basis for what? Not paying us our
2 compensation. Because she disagrees with us. Well,
3 respectfully, I disagree with her. The end of the day has
4 nothing to do with compensation. Lawyers win and lose cases
5 every day. We've been very fortunate. We've won quite a few.
6 We've lost some, too. But at the end of the day, it has little
7 or nothing to do with compensation. Ms. Chaitman is just using
8 this as another vehicle for complaint about the fact that she's
9 not getting her way, and her view of the law has been rejected,
10 uniformly by all courts in which she's thrust it in front of
11 them.

12 Two other points and then I think I'll turn it
13 over --- Mr. Bell is here, I see, from SIPC. But I don't
14 know -- is the trustee -- and the trustee's here.

15 Just two more points to sort of conclude this, Your
16 Honor, if I may. And I apologize for taking this much time.
17 The issue of Lehman Brothers, by analogy, I think fails on its
18 face. We're not talking about the biggest Ponzi scheme in the
19 world in Lehman Brothers. Lehman Brothers had all the stock
20 and all the cash. I'm very proud of Mr. Giddens; Mr. Giddens
21 has done a phenomenal job, and do you know what? He hasn't
22 taken on cent from SIPC because he didn't have to. That in
23 itself speaks volumes. Volumes about the fact that, yes, he
24 did distribute, you know, a phenomenal amount of money. But it
25 was there. So was the stock. That company failed because it

1 as part of a holding company that went bankrupt and when it
2 did, that brokerage house had to be liquidated. Not because
3 Robert (sic) Fuld or anybody else was taking any of the
4 money -- or Dick Fuld was taking any of that money. Nobody
5 was.

6 Maybe they made some bad investment choices and that's
7 true. And they were hit by a tsunami that was never even
8 anticipated by the financial community; that's also true. But
9 it wasn't one of the biggest sixty-five billion dollars Ponzi
10 schemes. And that explains the difference between the work
11 ethic and the work required in Madoff as opposed to Lehman.

12 Then, the last item that I'd like to bring up, Your
13 Honor, is that I'm very proud of the people that work on this
14 case. When they get demonized unjustly -- Mr. Picard in the
15 press is called "despicable". That's beyond the pale, not
16 acceptable. Litigate in a courthouse. Stick to the language
17 that's appropriate for lawyers. Don't get carried away. Best
18 example of this; Ms. Chaitman suggested that Mr. Picard's
19 getting fifty percent of all the money we bring in. I asked
20 Irving, "Why are you holding out?" It's ludicrous. Must know
21 nothing about the economics of law firms; a firm the size of
22 Baker, do you realize what the overhead is associated with
23 that? Just on its face is ludicrous. But it's even better
24 than that. So she gets called the other day by Law360. Law360
25 said what do you have for that? Do you have any documents?

1 No. She has no documents, nothing to support that. She
2 learned it, she said, by speaking to a friend of Mr. Picard's
3 in New Jersey. Wow. Wow. And you're willing, on the basis of
4 that, to come in and suggest that this trustee is taking that
5 kind of money and I am, too, I guess, so Baker's getting zero.
6 Right? This is ludicrous. This is beyond the pale. In
7 McCarthyesque fashion, she suggests, well, he didn't produce
8 his contract, it's un-Constitutional.

9 Your Honor, I think we've left reality here. I think
10 the reality is, is that this trustee and his counsel have
11 worked very, very hard and even without the statutory mandate
12 with regard to the payment and the fees in the absence of a
13 general estate, I respectfully submit that based on the work
14 and the achievements that we have in this case and the
15 submissions that we've made to Your Honor in connection with
16 therewith including this fee application, I respectfully submit
17 that Your Honor would approve this without the mandate from
18 SIPC.

19 Thank you, Your Honor.

20 MR. PICARD: Good morning, Your Honor. In this sixth
21 interim fee application, I'm seeking the payment of \$606,729.13
22 out of 713,799 dollars in time charges. Plus, the release of
23 \$113,304.32 of previously deferred fees and \$31.50 in
24 disbursements. I also request a reduction in the holdback from
25 fifteen percent to ten percent.

1 SIPC has filed its recommendations pursuant to Section
2 78eee(b)(5)(C) of SIPA in support. As the Court is aware, I've
3 discounted my hourly rate by ten percent. None of the payments
4 will be to me, my counsel or other administrative expenses come
5 out of the recoveries. And contrary to the argument of the
6 Peshkin objectors, I stand by my prior comments that SIPC does
7 not have a reasonable expectation of recouping its
8 administrative expenses at this time. It may happen in the
9 future, but we don't know that.

10 During the four-month period, as I mentioned, my
11 discounted fees would be 713,799 dollars. In addition to the
12 ten percent discount, I wrote off or did not bill approximately
13 139,000 dollars. As set forth in the application in Exhibit B,
14 a significant portion of my time was spent attending to
15 avoidance actions, claims review, case administration,
16 Bankruptcy Court litigation, dealing with matters with the U.S.
17 Attorney's office, the SEC and FINRA and the trustee's
18 investigation.

19 Your Honor, while I didn't hear all of what Mr.
20 Sheehan had to say, as you know and have commented in the past,
21 this proceeding involves a Ponzi scheme vast in scope and
22 geographical in reach. Many of our complaints allege and show
23 that. Nothing regarding customer claims nor the trustee's
24 investigation was dropped in our lap. It took hard work, as
25 that diagram will show. The fact that counsel disagreed with

1 our legal positions is not a basis to grant the objections,
2 especially when many of the matters are presently pending
3 litigation.

4 As with counsel's objection to the fifth interim
5 application, counsel for the objectors erroneously focuses on
6 the current allowed amount of customer claims, approximately
7 6.9 million dollars -- excuse me, billion dollars. As I
8 explained at the December 14th, 2010 interim fee hearing,
9 counsel conveniently ignores the 250 or so complaints with
10 Section 502(d) counts. If they are ultimately allowed or even
11 a portion is allowed, that would be at -- up to another at
12 least eleven billion dollars. While this is an issue more
13 properly dealt with in connection with the motion for
14 allocation of property and interim distribution, I feel
15 compelled to address it here today.

16 Counsel for the objectors, in effect, is asking Your
17 Honor to assume that no more than the current amount of allowed
18 customer claims will end up being the final amount. But, Your
19 Honor, you can just as easily assume that many of the claims
20 involved in litigation will be allowed. A number of
21 settlements for which we have filed applications for approval
22 include provisions allowing claims. And there are others being
23 negotiated as we speak and hopefully, we will be coming forward
24 with them in the near future. Accordingly, it still cannot be
25 reasonably said that SIPC will recoup its administrative

1 advances.

2 One other point I'd like to make is that when the
3 interim distribution is made, I cannot and I will not be put in
4 the position that counsel wishes of my making an over-
5 distribution so that at a later date we will have a problem and
6 might have to contact some of the distributees to recover back
7 money. That happened in an old act case called Lilinits (ph.).
8 It will not happen in the Madoff case. Further, the objection
9 is incorrect when it states that customer property amounts to
10 more than 9.8 billion dollars. I suspect that Mr. Sheehan has
11 gone through that math and I will not belabor that point.

12 Another objection I would like to comment on, as Mr.
13 Sheehan did late in his presentation, is the unfounded
14 allegation about my compensation and the assertion that I have
15 provided misleading information to the Court and to the public.
16 To the contrary, it is objectors' counsel who has been
17 spreading false information both in pleadings and press
18 releases. Counsel has been quoted in the press, as Mr. Sheehan
19 has indicated, there was nothing in the letter that she filed
20 yesterday that changes that. She is way off the mark. I don't
21 receive any percentage near thirty-five or fifty percent and I
22 certainly haven't received sixty to ninety million dollars
23 since the beginning of the case. Contrary to the allegation in
24 counsel's letter of yesterday, I am not a decision maker for
25 SIPC. And I am not a quasi-governmental agency or act in a

1 quasi-governmental capacity.

2 To try to end on a positive note, we have determined
3 all but four customer claims. And the remaining claims are the
4 subjects of settlement negotiations in connection with certain
5 pending litigation. Mr. Sheehan, I understand, has referred to
6 the recoveries on an average daily basis. I would submit to
7 Your Honor that in over 900 days of the case pending, that's
8 not too shabby.

9 Based on the record of these proceedings, I ask Your
10 Honor to award the requested amounts and the other requests
11 that I've made. I would be pleased to respond to any questions
12 that Your Honor may have.

13 THE COURT: I have none.

14 MR. PICARD: Thank you, Your Honor.

15 MR. BELL: Your Honor, Kevin Bell for the Securities
16 Investor Protection Corporation. When last we appeared on
17 December 14th, 2010 on the fifth application for interim fees
18 by trustee and counsel, we talked about hope and reasonable
19 expectation. Since that time, this Court has approved
20 settlements, recoveries by the trustee of over six billion
21 dollars. There is still a gap between my hope and lack of
22 reasonable expectation; my hope that customers will be fully
23 paid who have suffered injury by this malicious fraud, this
24 Ponzi scheme, and reasonable expectation that the Securities
25 Investor Protection Corporation will be paid back its advances

1 for administrative expenses. SIPC, of course, if the Court
2 approves these applications, advance the money to the trustee
3 to pay these allowed amounts of compensation as I have said in
4 all 903 days since the filing date, SIPC picks up the bill.
5 SIPC gets its funds from the securities industry, administers
6 its trust fund and not a penny of any compensation or
7 administrative expense has come out of any fund that the
8 trustee has gathered to satisfy the claims that have been
9 allowed by him.

10 In the hearing on December 14th at page 22 of the
11 transcript, I referred to the opponent's exhibit which was a
12 letter from the president of SIPC to then-Congressman Kanjorski
13 dated September 7th in which the president of SIPC estimated
14 that the total amount of allowed claims would be 17.3 billion
15 dollars. In the trustee's motion for allocation and
16 distribution to the victims here out of the fund of customer
17 property, the number that the trustee estimates will be
18 available for distribution mirabile dictu is 17.3 billion
19 dollars, not the 6.8 that our opponent harped on in the
20 December hearing nor in her latest opposition papers. There
21 are, as the trustee points out matters in his application,
22 matters that are in litigation and that are subject to Section
23 502(d) of the Bankruptcy Code in litigation with regard to
24 those allowed claims, one of which you will hear next week at
25 the hearing on the proposed settlement with Fairfield Sentry.

1 There will be another one in two weeks further out on the
2 settlement with Greenwich Sentry.

3 As you see, the window between hope and reasonable --
4 no reasonable expectation continues to narrow and, you know,
5 maybe one of these days on a fee application, I will stand up
6 and say, Your Honor, it will be the second criteria that you'll
7 be judging these fees on. I believe, you know, the extent of
8 fees in this case -- and I would note the Court to paragraphs
9 177, 178, 179 and 180 where the applicants say SIPC staff made
10 certain adjustments and suggestions which were adopted by the
11 trustee and B&H for each of the four months that are the
12 subject, October, November, December of 2010 and January of
13 2011, which are the subject of this application.

14 I can assure the Court that SIPC has pored over every
15 one of those pages, probably somewhere in the neighborhood of
16 six feet worth of documents and made comments and suggestions
17 as it sees fit and as it's charged by statute to do. And
18 that -- those adjustments and suggestions have been discussed
19 trustee and counsel. And when SIPC makes its recommendation,
20 it makes it in light of that overly intensive review of these
21 fees.

22 Another point I would note because you read in the
23 media -- and I don't know from whence it comes, of the
24 extraordinary dollars in this case. We've even had the SEC's
25 office and Inspector General comment on fee reviews. I've been

1 doing it for almost thirty-eight years and I guess I'm somewhat
2 expert at reading fee applications. It is among the most
3 enjoyable things that I do and it's why I went to law school.
4 You know, it's tedious; you need to have an understanding of
5 the full panorama of the case.

6 In Your Honor's commentary on my statements at the
7 December 14th hearing, you hit it right. This is a case like
8 none other. The opponents in this case are extremely -- or
9 represented by extremely highly skilled law firms. The
10 intensity with which it is litigated is of the highest order.
11 The staffing of the case is always a judgment that counsel has
12 to make when you are going up at what is reputed to be the best
13 among the best of New York's litigators. Because it's about a,
14 what I call a holy cause, which is to get the money back into
15 the fund of customer property so that the purpose of the
16 Securities Investor and Protection Act and the Congressional
17 intent is fulfilled and that is to make whole the victims.
18 Trustee is a long way along that road. If and when the Picower
19 settlement is final and those funds come into the trustee's
20 hands to distribution and if and when the Second Circuit
21 decides to affirm this Court's decision on that equity, forty-
22 four percent of the allowable claims, the 17.3 billion dollars
23 will be satisfied. That's getting close to, you know, only
24 another fifty-six percent more to go, Your Honor, until I stand
25 up here and say I -- there is a reasonable expectation.

1 But another point to note is that the public service
2 discount that SIPC suggests and counsel and trustee accept
3 before they're designated, in this case alone, through this
4 period, through January 31, is totaling twenty million dollars.
5 That's a healthy sum to leave on the table for any law firm
6 that's operating with its overhead. Some would like to see it
7 more. I can tell you in the adjustments and suggestions
8 adopted by the trustee the number may not reach that number but
9 it is high and may be considered painful by counsel when
10 they've made the adjustments but SIPC watches these fees.

11 In this -- in the opponent's letter that they filed
12 last night on page 2, I would like to address the trustee as
13 the decision maker for SIPC and I'd like to put it in context
14 of a decision that the Second Circuit made thirty-five years
15 ago in SEC v. Morgan Kennedy. In that case, the trustee,
16 Eugene Bondy, and the law firm of Rogers & Wells which
17 represented him took a position different than SIPC's and
18 bankruptcy judge Babitt, I think, ruled in favor of the trustee
19 and I think the trustee also was successful in persuading the
20 district court to agree with him. However, in the Second
21 Circuit, SIPC asserted its position and the Second Circuit
22 ruled with it.

23 SIPC always reserves the right as it does in -- by
24 statute to participate in all matters. And SIPC, in my view,
25 and I've been there almost thirty-eight years, is the ultimate

1 decision maker in this case as SIPC interprets the Securities
2 Investor Protection Act. The trustee is designated by SIPC and
3 appointed by the district court and the trustee is an
4 independent and makes his or her decision. But SIPC always
5 reserves the right to disagree.

6 I don't know whether we will ever be in such a
7 situation in this case, I hope not, but to -- I just wanted to
8 make the record clear that SIPC gets to be a decision maker in
9 its purview of the statute and its responsibilities and those
10 responsibilities not only talk about fees but talk about how
11 the statute's interpreted.

12 So, you know, with those points to the Court, I stand
13 by SIPC's recommendation in support of these fees and ask the
14 Court to enter an order approving these fees and I will assure
15 the Court that SIPC will work with the trustee and counsel when
16 we agree to move forward to try and make these victims whole in
17 this most perfidious of crimes. Thank you, Your Honor.

18 MS. CHAITMAN: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MS. CHAITMAN: The -- I take it that Mr. Picard has
21 conceded that he is compensated based upon a percentage
22 although not the percentage that I was told but, in any event,
23 a percentage of the fees that are paid to Baker & Hostetler. I
24 understood him to say that this morning. And I think that that
25 raises a very serious constitutional issue because clearly in

1 this case the trustee has made new law in terms of what SIPA
2 requires and permits.

3 THE COURT: I'd appreciate if you would get to the
4 question of the fees. If you're relating now to the letter
5 that you filed last night, then I'm going to tell you I'm going
6 to disregard that and I have a lot of comment to make about
7 that. That's a tactic I find somewhat abusive. Not even
8 calculated to get it before the Court. If it's intended as a
9 sound bite for the media, that is highly inappropriate.

10 I resent the fact that you filed a letter with the
11 Court at 4:30 in the evening of this hearing, didn't even get
12 it into the hands of the Court. What the tactic or the intent
13 of that letter is I do not know but the contents of that letter
14 are not appropriate for an objection to the fee request here.

15 MS. CHAITMAN: Well, Your Honor, there was no tactic
16 other than to --

17 THE COURT: The fact is it was not even brought to my
18 attention until just before I walked out here this morning.
19 And if it's a subject of any media conversation it's improper
20 with respect to this hearing today.

21 MS. CHAITMAN: Your Honor, it's --

22 THE COURT: It is not being regarded by this Court.

23 MS. CHAITMAN: Okay. We have made allegations which
24 are substantiated by personal knowledge with respect to
25 attorneys in my firm that Baker & Hostetler has grossly padded

1 time on matters in which we are directly adverse. We are not
2 in a position to attest to whether time was padded on matters
3 in which we are not involved because we have no way of knowing.
4 But on matters in which we have been directly adverse, Your
5 Honor, the -- where it would be reasonable to spend maybe 200
6 dollars, there were 6,900 dollars billed. It is so out of
7 whack with what could reasonably be considered compensable time
8 that it raises the issue whether that kind of overbilling
9 pervades the fees.

10 Now, the reason this is an important issue aside from
11 the fact that it goes to the integrity of the proceedings is
12 that SIPC, unless SIPC is prepared to say that it will not be
13 reimbursed for administrative expenses before the general
14 unsecured creditors are paid, in this case for the first time
15 in SIPC's history, the trustee has taken the position that
16 there are certain customers who don't have allowed customer
17 claims but will have allowed general unsecured claims. So,
18 that is a -- the great mass of the victims of Mr. Madoff are
19 going to be considered general unsecured creditors and unless
20 SIPC is prepared to say that it will not be reimbursed until
21 all the general unsecured creditors are paid in full, then any
22 overpayments to Baker & Hostetler come directly out of the
23 pockets of more than half of the victims of Mr. Madoff's crimes
24 and that's why this is such an important issue for us.

25 Now, with respect to the clawback actions against

1 innocent investors, Your Honor, we've laid out in our objection
2 that clearly under the statute, Mr. Picard does not have
3 standing to pursue those claims because he doesn't have the
4 right to utilize the avoidance provisions of the Bankruptcy
5 Code unless and until the allowed claims exceed the fund of
6 customer property.

7 Now, maybe someday that would be true but it's not
8 true today. Today he has enough money in the fund of customer
9 property to pay the allowed customer claims. Therefore, he
10 does not have standing, the statute is absolutely clear on
11 this, so, he has pursued a great deal of litigation against
12 innocent victims of Mr. Madoff's crimes and caused havoc among
13 5- or 6,000 people and their families without any statutory
14 authority. And that could have been dealt with in a different
15 way, in a way which would have cost the estate a great deal
16 less money in terms of professional fees and would have saved a
17 great deal of heartache among thousands and thousands of
18 innocent victims.

19 We will see what the decisions are of Judges McMahon
20 and Rakoff in the pending litigations there but they have both
21 issued preliminary decisions withdrawing the reference in whole
22 or in part in Judge McMahon's case with respect to JPMorgan
23 Chase in whole. In Judge Rakoff's case with respect to HSBC in
24 part, however, both judges indicated in preliminary decisions
25 that the trustee does not have standing under established law

1 to pursue aiding and abetting claims, to pursue claims pursuant
2 to the assignments to the extent that SPIC has paid some of the
3 claimants and to pursue claims that are barred under the in
4 pari delicto doctrine.

5 Now, for the trustee's law firm to be compensated tens
6 of millions of dollars for assertion of claims that the trustee
7 has no standing to bring is a waste of money. And, Your Honor,
8 if it's SIPC's money and SIPC's members want to pay for that,
9 that's fine but then SIPC should stand up and say that they are
10 prepared to waive any claim for reimbursement until all of the
11 general unsecured creditors are paid in full.

12 Now, we have alleged in our objection that the -- that
13 Baker & Hostetler has used temporary attorneys and not complied
14 with controlling law as to the disclosure of the terms of those
15 temporary attorneys' retention. There has been no disclosure
16 of the terms, the number of temporary attorneys, the amounts
17 that were actually paid for the agencies for those people's
18 time. There's been no disclosure of that and yet there are
19 scores of people whose time is billed at what appeared to be
20 regular Baker & Hostetler rates for people who are not on Baker
21 & Hostetler's website even four or five months after the time
22 period that's covered by this fee application.

23 In addition, the fee application charges for overhead
24 expenses that are not permissible. It doesn't go through how
25 you can justify taking away from a general unsecured creditor

1 money in order to pay for a librarian, an assistant librarian
2 and there's no disclosure of how far that goes. So, those are
3 the bases on which we do object, Your Honor. And again, if it
4 doesn't cost anything for the clients that I represent, the net
5 winners who are going to be general unsecured creditors in this
6 estate, then if SIPC wants to squander its money, that doesn't
7 hurt us. But if it comes out of our pocket, it does hurt us.
8 Thank you.

9 THE COURT: You want to be heard?

10 MR. SHEEHAN: None of what you just said is true.
11 Just not true. So, I don't understand how to respond to this.
12 Thousands and thousands and thousands? That -- 6,000 people?
13 These numbers have no relationship to reality. None. Zero.
14 And that's true of everything else she said. Doesn't have any
15 relationship to reality. We're squandering money? How do you
16 come up with these conclusory allegations?

17 Whether SIPC ever gets reimbursed in this case is so
18 far down the road we should be kissing each other if that
19 happens. It means we'll have collected over twenty billion
20 dollars that SIPC then shares. Your Honor will decide that
21 when that happens and so will the -- and the statute will be
22 dealt with then. But right now instead of saying we're
23 squandering money or wasting our time on standing, Helen
24 Chaitman ought to be standing behind me and cheering us,
25 cheering us to help those victims who don't get their money

1 back that she wants to take away from them.

2 That's really what's going on here. She wants that
3 money. She wants the money that's going to go to those
4 victims. Take it. That five billion dollars? There's only
5 one place that money came from. It came from people who didn't
6 get their money back. She wants it. Not to give it to them.
7 To take it away from them. This is pernicious what's going on
8 here. Has to stop.

9 MR. BELL: Your Honor, the way I read the statute,
10 78fff(d), it's very clear that sets the scheme for repayment of
11 SPICs for its administrative offense -- expenses. If and when
12 we reach that point in time where the trustee is being -- is
13 able to fully satisfy the -- all the allowed claims in this
14 case and when we look at another ten billion dollars are so;
15 and that's with a "b", ten billion, then we'll look at the
16 statute. But Congress clearly set forth what the statute is
17 and SIPC has no desire to engage in negotiation with Ms.
18 Chaitman in ignoring the clear words of the statute.

19 THE COURT: Thank you all. I'm here to determine
20 these applications based upon the filed papers and they are
21 somewhat voluminous. The objection that's been lodged here is
22 interesting in that there are, indeed, hundreds and hundreds of
23 very highly skilled law firms that are involved in this matter
24 on both sides of the equation of net winners, net losers, yet
25 there is only one objection that's been filed out of all of

1 those hundreds of skilled people knowledgeable in the field and
2 of the thousands of victims. It's somewhat clear to this Court
3 that the objection is rather partisan and parochial and is made
4 on behalf of an attorney and her clients who are not
5 particularly pleased with the determination on net equity as to
6 where the money goes to winners or losers.

7 I do agree that among the most important of the Madoff
8 victims are those who never got anything back or who are net
9 losers and somehow or other Ms. Chaitman doesn't feel necessary
10 to champion that particular group.

11 But notwithstanding all of that, the statute is very,
12 very clear as to the Court's role here in approving the
13 requested fees. And the statute is clear that unless there is
14 some reasonable expectation of recoupment, when SIPC recommends
15 that the amounts requested be approved the Court is required to
16 award the amounts recommended by SIPC. That's occasion to
17 hear. I do not at this point -- it would be very nice if
18 during our lifetimes we see the situation come about where
19 there is a likelihood of recoupment to SIPC. It means that
20 everybody else will have recovered what's appropriate for them.
21 I do not see that at this point in time nor am I speculating or
22 should speculate.

23 With respect to the kinds of services that have been
24 rendered here, the amounts requested, this is by any stretch of
25 the imagination one of the largest most complex sets of

1 litigation that have come down the pike. It's measured both in
2 quality and quantity in the thousands with deadlines that have
3 come upon everyone under the statute so that the December
4 deadline requiring thousands of new law suits to be filed is
5 something that was anticipated and it is a big stretch for any
6 law firm or any organization to deal with.

7 The chart that has been presented here as an
8 illustration of the enormous and complex activity involving
9 just one feeder fund with billions of dollars involved,
10 lawsuits all over the world and here is indeed forms a
11 predictor of the continuation of the kind of litigation that's
12 involved here. And for purposes of this hearing, I am
13 considering that charge as an exhibit, as a model of the kind
14 of activity in complex cases that are involved here in the
15 Madoff proceedings.

16 Many of the objections that are contained here have
17 been responded to both today orally and in the reply papers.
18 Most of the contents of the reply papers were not addressed by
19 Ms. Chaitman and the only thing that's come up is the one
20 single interesting kind of letter filed last night, not
21 necessarily calculated to get before the Court for review and
22 interpretation but nevertheless, purely speculating, making
23 general statements in a very improper fashion and also,
24 perhaps, even dealing with matters that are not yet coming
25 before the Court for purposes of today's objection.

1 The tactic of this kind of activity is not to be
2 countenanced. In my litigation days we called this
3 sandbagging; when you file a piece of paper which you know is
4 not able to be refuted whatever the contents are of that paper
5 and Courts generally disregard that kind of activity. To the
6 extent this becomes -- these filings become media events, they
7 are not considered by the Court in the context of the matter
8 that's before me.

9 The objection filed and all pertinent parts is a
10 repackaging of the prior interim fee objections. There is
11 nothing or any -- there is no argument that's set forth in the
12 objection that does provide any basis for the Court to deviate
13 from the statutory language that is determinative of this
14 application for fees. I overrule the objections in every
15 respect -- I'm sorry; that's objection, singular, in every
16 respect and grant the applications in full. Submit the
17 appropriate orders.

18 MR. SHEEHAN: I will Your Honor. I have it on disk.
19 I don't have the hard copy here with me, Judge. Can I just
20 leave you a disk? Thanks.

21 Your Honor, I think that concludes the calendar for
22 today.

23 THE COURT: Thank you.

24 MR. SHEEHAN: Thank you Your Honor.

25 THE COURT: Looking at a copy of the now infamous

1 letter, I see that it was also delivered to the court
2 downstairs and hand stamped sometime after 4 o'clock yesterday
3 afternoon.

4 MS. CHAITMAN: I apologize, Your Honor. We tried to
5 have it brought up to your chambers but they wouldn't let us
6 bring it up.

7 THE COURT: Nevertheless, you didn't get it there
8 until sometime way after 4 o'clock.

9 MS. CHAITMAN: You're right, Judge.

10 (Whereupon these proceedings were concluded at 11:10 AM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true and accurate record of the proceedings.

SARA DAVIS

AAERT Certified Electronic Transcriber CET**D 567

Also transcribed by:

ELLEN KOLMAN

AAERT Certified Electronic Transcriber CET**D 568

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: June 2, 2011

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 IN RE:
4 BERNARD L. MADOFF INVESTMENT
5 SECURITIES LLC

6 IRVING H. PICARD,

Plaintiff,

7 v.

11 CV 3775 (JSR)

8 JAMES GREIFF,

9 Defendant.

10 -----x

11 New York, N.Y.
12 July 28, 2011
13 6:10 p.m.

14 Before:

15 HON. JED S. RAKOFF,

16 District Judge

17 APPEARANCES

18 BAKER & HOSTETLER
19 Attorneys for Plaintiff
20 BY: DAVID J. SHEEHAN

21 BECKER & POLIAKOFF
22 Attorneys for Defendant
23 BY: HELEN DAVIS CHAITMAN

24 SECURITIES INVESTOR PROTECTION CORPORATION, Intervenor
25 BY: KEVIN H. BELL

1 (In open court)

2 DEPUTY CLERK: July 28, 2011, Irving Picard versus
3 James Greiff. Please be seated, and will the parties please
4 identify themselves for the record.

5 MR. SHEEHAN: David Sheehan from Baker & Hostetler for
6 the trustee, Irving Picard.

7 MR. BELL: Kevin Bell for the Securities Investor
8 Protection Corporation.

9 MS. CHAITMAN: Good afternoon, your Honor, Helen Davis
10 Chaitman from Becker & Poliakoff on behalf of James Greiff and
11 64 other defendants in similar actions.

12 THE COURT: Good afternoon, please be seated.

13 So before we hear argument on this motion to withdraw
14 the bankruptcy reference, let me sort of clear the air a little
15 bit of some things that are not before the Court.

16 First, earlier today I issued an opinion dismissing
17 the common law claims against HSBC Bank and certain other
18 defendants, but there are no common law claims involved in the
19 instant motion, so that's not before me in this argument.

20 Secondly, in withdrawing the reference in the
21 Wilpon/Katz matter, I was particularly concerned -- that was
22 not the only issue -- with the very interesting issue of
23 whether the bankruptcy law or conversely non-bankruptcy law
24 should govern the standard of what constitutes willful
25 blindness or recklessness or things of that sort. That's not

1 before the Court in this motion because no such claim is being
2 made as against the defendant that we're concerned with this
3 afternoon. So this is, I think, a withdrawal motion of a
4 rather more narrow compass than those I considered previously.

5 I'm also at the threshold a little perplexed by the
6 fact that Ms. Chaitman only filed a motion to withdraw the
7 reference on behalf of James Greiff, and she seeks in a
8 footnote in a brief to say that well, this is also a motion to
9 withdraw the reference of 313 other defendants.

10 I don't think that a footnote in a brief can serve
11 that purpose. Now if trustee counsel and SIPC counsel want to
12 agree to that, that's one thing, but if they don't,
13 Ms. Chaitman, you have got to tell me where in the entire
14 history of the law in the United States there is authority for
15 saying that a footnote in a brief is the equivalent of a
16 motion.

17 MS. CHAITMAN: With respect to that issue, your Honor
18 is absolutely right. The complaints are identical with respect
19 to each of our clients, and if the Court rules in the Greiff
20 case, I believe that that ruling would be applicable to
21 everyone else.

22 THE COURT: That may or may not be, but the only
23 motion before me right now involves Mr. Greiff.

24 MS. CHAITMAN: I appreciate that, your Honor.

25 THE COURT: All right. Now of the issues that are

1 presented, the one that seems to me to be new is the one
2 related to the nature of Mr. Picard's compensation and whether
3 this creates some sort of conflict. And of course, I'm not
4 dealing with the merits of any issue here today, I'm dealing
5 with the question of whether there's a basis for withdrawal
6 from reference.

7 But I was curious to see in the argument by SIPC that
8 they don't regard themselves as a quasi-governmental
9 institution. Does that mean that you don't and have never
10 asserted governmental immunity in any case?

11 MR. BELL: Not that I know of, your Honor.

12 THE COURT: I'm glad to hear that. It seems to me
13 it's been fairly commonplace for similarly situated entities to
14 assert that they are quasi-governmental, therefore, that
15 they're entitled to -- usually they claim absolute immunity.
16 The Second Circuit in a number of cases has granted that view,
17 as has this Court, but if you're not asserting that --

18 MR. BELL: I think we're constrained by the words of
19 Congress in the statute, which are very plain, that we're a DC
20 nonprofit corporation and not an agency or establishment of the
21 United States government, which is found in 3A.

22 THE COURT: What do you think the New York Stock
23 Exchange is?

24 MR. BELL: Excuse me?

25 THE COURT: What do you think the New York Stock

1 Exchange is?

2 MR. BELL: We're not the New York Stock Exchange.

3 THE COURT: I know you're not, but is it not in the
4 same sense that you're talking about; it wasn't created by the
5 government, but under the Securities Act, because it served
6 nevertheless certain quasi-governmental functions when it does
7 regulatory activities --

8 MR. BELL: We have no --

9 THE COURT: I understand that.

10 MR. BELL: We have no rule-making power.

11 THE COURT: Excuse me, I really would like to finish
12 my sentence, if you don't mind.

13 MR. BELL: Sure.

14 THE COURT: But when it has exercised government-like
15 activities, then the Second Circuit has said its
16 representatives get absolute immunity. So here, as I
17 understand it, you in some sense are appointed by the court on
18 the recommendation of the Department of Justice and report in
19 some sense to the Department of Justice. No?

20 MR. BELL: No, there is no link between SIPC and the
21 Department of Justice.

22 THE COURT: None whatsoever?

23 MR. BELL: None that I can recall, and I have been
24 there 37 years.

25 THE COURT: So it's different from a bankruptcy

1 trustee.

2 MR. BELL: It is totally different. In fact, the
3 bankruptcy rules say that in a SIPA proceeding there needs to
4 be nothing served upon the Office of the U.S. Trustee. So
5 clearly there is an understanding in the bankruptcy rules that
6 the U.S. Trustee has nothing to do whatsoever with the SIPA
7 trustee or anything of that nature.

8 THE COURT: So taking then you to be a purely private
9 entity --

10 MR. BELL: We're a creature of the statute that
11 Congress has created us by.

12 THE COURT: Well, I don't know what that means. Are
13 you private or public or something in between?

14 MR. BELL: Excuse me, we are at Section 3A, as set
15 forth, it says: There is hereby established the body corporate
16 to be known as the Securities Investor Protection Corporation,
17 and SIPC shall be a nonprofit corporation and shall have
18 succession until dissolved by the Act of Congress. SIPC shall,
19 A, not be an agency or establishment of the United States
20 government; and B, except as otherwise provided in this
21 chapter, be subject to and have all of the powers conferred
22 upon a nonprofit corporation by the District of Columbia
23 Nonprofit Corporation Act.

24 THE COURT: So you think you are purely private.

25 MR. BELL: We have elements of responsibility that are

1 given us by the statute to work with the United States
2 Securities & Exchange Commission. SIPC is set up as a
3 membership corporation of all broker/dealers registered under
4 15B of the Securities Exchange Act of 1934. We're required to
5 collect assessments, to create a fund, to maintain that fund,
6 and when we have notice from the -- referral from the
7 commission, we are charged with making the decision whether the
8 customers of the SIPC member, which are registrants of the
9 commission, need the protections afforded by this
10 Congressionally-mandated protection plan.

11 THE COURT: So that sounds like you have some
12 quasi-governmental responsibilities.

13 MR. BELL: We do have responsibilities. We are
14 overseen by the commission, and we are overseen by
15 congressional committees both in the House and in the Senate.

16 THE COURT: So would it be lawful for a prosecutor,
17 for example, to have his salary be a percentage of all fines he
18 collected when he brought various similar criminal actions as
19 U.S. Attorney?

20 MR. BELL: I don't know, your Honor, that is not an
21 issue that arises under the Securities Investor Protection Act.

22 THE COURT: The compensation of Mr. Picard, according
23 to Ms. Chaitman, is on a percentage basis.

24 MR. BELL: That is incorrect.

25 THE COURT: Well, I don't know that, all I know is

1 what she is alleging.

2 MR. BELL: Your Honor, if I might direct you to
3 Section 5B5, there is set forth in the statute compensation for
4 services and reimbursement of expenses. In no SIPA liquidation
5 proceeding in its 40 and a half years has any compensation to a
6 trustee or counsel been on a percentage basis.

7 THE COURT: So what are the terms of compensation?

8 MR. BELL: Compensation is set forth on a reasonable
9 basis usually on the number of hours times the hourly rate,
10 which is usually at a discount, that is given by the trustee
11 and counsel at the time of their appointment or right before.
12 And those requests for compensation are presented to the
13 bankruptcy court and are subject to notice of hearing, and
14 after consideration by the bankruptcy court with the required
15 recommendation of SIPC, there is an order issued by the
16 bankruptcy court.

17 Now in a case where there is no reasonable expectation
18 of recoupment of those administrative expenses, the fees, there
19 is a requirement by the court to grant the amounts recommended
20 by the Securities Investor Protection Corporation, if those
21 amounts recommended by SIPC are the same amounts requested by
22 the trustee and counsel.

23 THE COURT: So if I understand what you're saying, in
24 this case, as far as you're aware, the trustee and his counsel
25 are compensated on an hourly basis.

1 MR. BELL: On a discounted hourly rate.

2 THE COURT: Discounted hourly rate. And I guess the
3 one other question I have is do you know of any arrangement
4 between the trustee and his firm as to whether he receives a
5 special compensation with regard to how much the firm receives?

6 MR. BELL: Let me put it in context and I will answer
7 your question. I have been the SIPC attorney assigned to this
8 case since December 11, 2008 when SIPC got the referral call
9 from the Securities & Exchange Commission. I have reviewed
10 every page of every invoice for the 960 days -- and today 960th
11 day of this case -- submitted by trustees.

12 THE COURT: But who's counting?

13 MR. BELL: No, I don't count, your Honor, nor does my
14 wife.

15 The 960 days that this case has been going on, there
16 is a compensation procedure order that was signed by Judge
17 Lifland in February, I think February 23rd, 2009, that sets
18 forth that the trustee and counsel shall submit their invoices
19 monthly to SIPC, SIPC shall review them, and if they pass
20 SIPC's muster -- which they never do because there is always
21 adjustments that we request -- then SIPC can advance the funds
22 to the trustee to pay them. And then within a period of 120 to
23 150 days an application for those months shall be made to the
24 Court.

25 There have been six such applications to the Court

1 running through the period of January of this year, and we are
2 in the seventh application period, which hasn't been submitted.
3 But SIPC gets those invoices shortly after the 20th of every
4 month and thoroughly reviews them. Not only do I review them,
5 but then I make my recommendation and my extensive detailed
6 memo to the general counsel of the corporation who almost
7 always does a de novo through every page again to make sure
8 we've looked at everything and understand everything. In that
9 review, we also have a full and complete understanding of what
10 is engaged in the case, what the issues are --

11 THE COURT: I mean this is all very helpful, but I
12 think you missed my question. I understand --

13 MR. BELL: There is no knowledge, your Honor, by SIPC
14 of whatever arrangement -- nor has there ever been, of what the
15 arrangement is between the trustee and counsel.

16 THE COURT: And given the allegations -- and I want to
17 find out whether there are any bases for the allegations from
18 your adversary -- but given her allegations, why shouldn't you
19 inquire into what the arrangements are within the firm?

20 If for example -- and this is not the case, this is to
21 take an extreme hypothetical -- if the arrangement of a lawyer
22 with a firm was that you will be paid a very high percentage of
23 what the fees are in this case, that might arguably place the
24 trustee in a position where he would have a motive that could
25 factor into his determination whether to sue people and for how

1 much.

2 I am not suggesting at all that that is necessarily a
3 fair inference, I just wanted to find out what reason there
4 would be for not inquiring about that.

5 MR. BELL: Your Honor, we never have, and in fact all
6 of the litigation decisions that are engaged in, if we have a
7 question, we ask why. We review the papers. We are very aware
8 of the aspects of all actions commenced and intended to be
9 commenced by the trustee. After seeing what I consider the
10 rank speculation by opposing counsel, which has been
11 articulated on the sixth application and was argued before
12 Bankruptcy Judge Lifland and was dismissed by Judge Lifland in
13 the sixth application hearing on June 1st of this year, it
14 is --

15 THE COURT: Well, the only reason I'm raising it is
16 because it struck me as something that we hadn't discussed
17 before, and number two, more importantly, because it is at
18 least arguably a non-bankruptcy issue.

19 MR. BELL: Well, if you look at what we've cited, you
20 will see Judge Scheindlin -- similar issues were raised before
21 her regarding constitutional issues by Ms. Chaitman back on one
22 of the earlier applications, and we have given you the citation
23 at page 23 of our opening memorandum. There have been a lot of
24 press reports. If you follow what was said, the source of it,
25 I think it's all smoke, no fire.

1 THE COURT: That may be. Let me let you off the hook
2 for the moment, and I want to inquire of Ms. Chaitman: What is
3 the basis for these allegations?

4 MS. CHAITMAN: Your Honor, the basis is that I have
5 been informed by a personal friend of Mr. Picard that he was
6 compensated --

7 THE COURT: Who?

8 MS. CHAITMAN: A lawyer in New Jersey.

9 THE COURT: Who?

10 MS. CHAITMAN: You know, unfortunately I can't
11 remember his name, but let me finish. What happened was he
12 told me Mr. Picard was compensated on the basis of 33 to
13 50 percent of the billing Baker & Hostetler collected.

14 THE COURT: Did you have any other basis?

15 MS. CHAITMAN: No. When we argued --

16 THE COURT: So wait a minute, let me just -- forgive
17 me for interrupting, but on the basis of some hearsay comment
18 from someone who may or may not have had personal knowledge,
19 and who must be so little known to you that you can't even
20 remember his name, you made an allegation of unethical or
21 biased approach by Mr. Picard? That seems an awfully weak read
22 to make such an allegation.

23 MS. CHAITMAN: What I stated in the objection to the
24 fees is I have been told this was the case, and if it was the
25 case, I felt it raised due process issues.

1 At the argument, Mr. Picard stood up and said that the
2 percentage he gets is nowhere near what Ms. Chaitman said it
3 was. So we now have Mr. Picard on the record in the transcript
4 that we provided to your Honor admitting that he is paid a
5 percentage of the fees paid to Baker & Hostetler, which is
6 directly contrary to the affidavit which he submitted to the
7 Court which gave the very, very strong impression that he
8 doesn't even receive his compensation, the fees that are
9 allocated to his time. For example, in a typical period, a
10 four-month period or three-month period, Baker & Hostetler may
11 receive \$40 million, and Mr. Picard's proportion of that is 4
12 million, or in addition it's 4 million for Mr. Picard's time.
13 What Mr. Picard said on the record -- and your Honor has the
14 transcript -- is my percentage is nowhere near what
15 Ms. Chaitman says it was.

16 THE COURT: So assuming arguendo that he was paid on a
17 modest percentage basis of what the firm gets, because it seems
18 crystal clear from what your adversary just said that as far as
19 SIPC is concerned, they only get time charges, discounted time
20 charges, which they knock down still further, although one
21 suspects that the hourly rate will be still considerably higher
22 than is paid to federal judges.

23 So this is an arrangement on -- let us assume
24 hypothetically that he made with his firm that involves a
25 modest percentage, not unlike in some ways arrangements made by

1 most of the major firms in the United States to pay their
2 so-called rain makers a higher percentage of the firm's intake
3 or a higher percentage based on what they bring in than other
4 partners. This is more or less in that sense standard practice
5 among most of the private major firms in the United States. So
6 where is the problem?

7 MS. CHAITMAN: Well, I agree with you that it is
8 common, your Honor, for rain makers to be compensated on the
9 basis of what they originate, and there is no problem unless
10 someone is performing a quasi-governmental function, and then
11 we learned from several United States Supreme Court cases that
12 there is a major problem, just as your Honor indicated in the
13 question to Mr. Bell.

14 THE COURT: My first question about the U.S. Attorney
15 wasn't actually a hypothetical. In the 19th century, U.S.
16 Attorneys throughout the United States were paid a percentage
17 of the fines they brought in, which made them much better paid
18 than they are today. But it was determined, as you correctly
19 note, that that was not an appropriate way for them to exercise
20 their quasi-governmental function.

21 Why do you think there is any quasi-governmental
22 function being exercised?

23 MS. CHAITMAN: Because I think that SIPC -- if you
24 review the legislative history of the Securities Investor
25 Protection Act, you will see that there are numerous statements

1 by people in Congress that SIPC is to function like the FDIC,
2 to provide insurance to investors, to promote confidence in the
3 capital markets, because investors were giving up the
4 protection of certificated securities, and in lieu they were
5 getting SIPC insurance.

6 THE COURT: Well, the question, of course, isn't the
7 legislative history. If we learned anything from Justice
8 Scalia it's that we go from the plain language of the statute
9 which was just read to me.

10 MS. CHAITMAN: That's right. And the statute provides
11 that SIPC operates under the direction of the Securities &
12 Exchange Commission. It reports to the Securities & Exchange
13 Commission. It reports to Congress. And I believe that there
14 are numerous decisions in which courts have referred to SIPC as
15 functioning in a quasi-governmental capacity.

16 And it is a hybrid, I don't dispute it is a hybrid,
17 but the problem here, your Honor, is SIPC and Mr. Picard have
18 taken positions that are unprecedented in the 40-odd years of
19 SIPC's existence. This is the first time in SIPC's history
20 that it has filed practically a thousand lawsuits against
21 innocent customers of an SEC regulated broker/dealer on the
22 theory that they're not allowed to rely on upon the statements
23 they receive from their brokers which is the only evidence that
24 they have of the ownership of their investments.

25 And I believe that the problem here is that if

1 Mr. Picard is compensated on a percentage of the fees paid to
2 Baker & Hostetler, whatever that percentage is -- and he hasn't
3 yet disclosed it, but whatever that percentage is, it brings
4 into question the integrity of his decisions in this case.
5 Your Honor today dismissed the aiding and abetting claims -- I
6 gather from what you're saying, I hadn't been aware of it until
7 you mentioned it -- that were brought against HSBC.

8 (Continued on next page)

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1 THE COURT: Well, if you have trouble falling asleep
2 tonight, just read my opinion.

3 MS. CHAITMAN: Here we have a situation where 988
4 clawback actions were filed against 5,000 customers at Bernard
5 L. Madoff Securities whose only crime is that they took, for
6 mandatory, mandatory withdrawals from their IRA account.

7 THE COURT: The point though, and now maybe we should
8 turn back to the main issues, to the extent that the issues you
9 are raising are being raised in the context of pure bankruptcy
10 law claims, then it is hard to see what the nonbankruptcy law
11 aspect is that would bar the withdrawal of the reference. If
12 someone takes an unusual position under bankruptcy, pure
13 bankruptcy -- let's make it a hypothetical -- that is not a
14 basis for seeking mandatory withdrawal. It could conceivably
15 in an unusual case with a lot of other factors might warrant
16 discretionary withdrawal, but we're just concerned here with
17 mandatory withdrawal, so we're talking about mandatory
18 withdrawal and we're talking about substantial and unusual
19 issues of nonbankruptcy law.

20 MS. CHAITMAN: And your Honor has said that SIPA is
21 not a bankruptcy law and that if there is a substantial issue
22 with SIPA the mandatory --

23 THE COURT: Well, that part of the argument I am
24 familiar with. Maybe I guess the way I should put the issue to
25 you is this: Is there any other nonbankruptcy law issue other

1 than the SIPA issue that you of course are raising and the due
2 process issue that you say is raised by the state that you are
3 contending warrants withdrawal?

4 MS. CHAITMAN: The issues that I briefed that warrant
5 withdraw are the entity and debt issue which your Honor is
6 familiar, the 546(e) issue with which your Honor is familiar,
7 the issue we've been discussing which arises under the due
8 process clause of the United States Constitution, and a seminal
9 issue which is an issue which I think requires mandatory
10 withdrawal and that is whether under 15 U.S. 78 FFF-2C3 the
11 trustee has the power to file these actions because that
12 provision doesn't give a trustee under a SIPA liquidation
13 blanket power to file fraudulent transfer action. A SIPA
14 trustee only has the power to file a fraudulent transfer action
15 in a case where the fund of customer property is insufficient
16 to pay the allowed customer claims.

17 THE COURT: I want to go back and at least modify to
18 the extent you said I found SIPA is a nonbankruptcy state.
19 What I found is that there are important aspects of SIPA that
20 in some of these cases that were raised that are nonbankruptcy
21 issues. There are parts of SIPA that on their face just adopt
22 Title 11.

23 MS. CHAITMAN: That's right. To the extent it is not
24 inconsistent with SIPA.

25 THE COURT: So I think you fairly summarize what you

1 are raising here and you have correctly said that the first two
2 issues, and I am happy to hear anything else you want to say on
3 it but I have been there and heard that, so for oral argument
4 purposes I think the last issue you just raised is now what we
5 should now focus on.

6 MS. CHAITMAN: Well, I think it is important, your
7 Honor, to look at the history of the Securities Investment
8 Protection Act. As I indicated it was enacted in 1970 at a
9 period of time, not unlike today, when there was a significant
10 loss of confidence in the capital markets. The purpose of SIPA
11 was to instill confidence in the capital markets by providing
12 SIPC insurance and at the same time the purpose was to induce
13 investors to relinquish the protection of certificated
14 securities.

15 I am sure your Honor remembers in the old days when
16 you buy IBM stock, we would get a certificate with a beautiful
17 gold certificate on it and if we lost the certificate --

18 THE COURT: It is quite unfair for you to remind me
19 how old I am.

20 MS. CHAITMAN: I was actually just speaking of us
21 generally, your Honor.

22 In any event, if you lost a certificate, you simply
23 wrote to the issuer and submitted an affidavit and got a second
24 one. I think that in 1970 the securities firms were anxious to
25 get away from certificated securities and the reason was:

1 Number one, certificated securities were a back-office
2 nightmare for the brokerage firm. It was not a profitable
3 activity to be transferring securities from Helen Chaitman to
4 Jed Rakoff. The firms were behind in doing that paperwork.
5 The other thing is that the firms undoubtedly had the foresight
6 to understand that if they could persuade the investing public
7 to allow them to hold securities in book-entry form, in
8 street-name form, they would be able as the SEC has allowed
9 them to to pledge those securities for their own purposes, to
10 buy and sell them when it was advantageous for them to do so.

11 So what happened as a result of the enactment of SIPA
12 was that the customer statement became the only evidence that a
13 customer had of what he owned. Today of course we could never
14 turn the clock back because the financial products that are
15 offered to investors cannot be certificated. If you buy an ETF
16 or index fund or mutual fund, you cannot possibly get
17 certificates to represent your ownership interest and there is
18 no way to turn that clock back.

19 The problem in this case is that for the first time in
20 SIPC history is turning to people who received monthly
21 statements and trade confirmations showing the purchase of real
22 securities, Fortune 100 company stocks, the only evidence that
23 these people could possibly rely upon was the documents they
24 received on a regular basis from their SEC regulator broker
25 dealer. Yet in this case we have a trustee in a simple

1 liquidation who is saying, That statement doesn't mean what it
2 says. This trustee has gone back to the 1960s. I have
3 clients, your Honor, who opened up Madoff accounts in the 1960s
4 and what Mr. Picard has done to the extent he has the records
5 is netted out deposits and withdrawals going back to the 1960s
6 so that people got no credit for any appreciation from the day
7 they opened their account and he was self-effectuating
8 fraudulent transfer judgments going back decades beyond the
9 statute of limitations.

10 He has only sued for the withdrawals in the last six
11 years, but he has determined whether someone was subject to a
12 clawback suit by netting out deposits and withdrawals going
13 back for decades. Of course these people have all paid taxes
14 to the federal and state governments that they were liable to
15 pay based on the statements they received from the broker
16 showing that they had earned these profits. So there is a
17 fundamental issue, which I don't believe has ever been
18 determined. And interestingly enough, your Honor, in the New
19 Times case of 2004, both SIPC and the SEC took the position in
20 the briefs they submitted in the Second Circuit that someone in
21 the position of all of these people was entitled to a claim in
22 the amount of their last statement.

23 THE COURT: Let me hear now from counsel for the
24 trustee who has been unusually off the hook so far but now is
25 your opportunity.

1 MR. SHEEHAN: Your Honor, just a couple things. The
2 argument just made by Ms. Chaitman is identical to an argument
3 that was made to Judge Lifland in the Bankruptcy Court.

4 THE COURT: And decided.

5 MR. SHEEHAN: And decided by him.

6 THE COURT: And therefore subject to appeal to the
7 District Court from that decision.

8 MR. SHEEHAN: Right. And Ms. Chaitman and other
9 defendants request we agreed to expedite that decision to the
10 Second Circuit where all the arguments just made were also
11 presented.

12 THE COURT: Remind me, because I have forgotten about
13 that, where that presently stands.

14 MR. SHEEHAN: It has been argued on March 3. We're
15 awaiting decision from the Circuit, your Honor.

16 So to a very large extent I go back to what your Honor
17 was suggesting. I don't think what you have before you is an
18 issues you in this context with regard to the last statement
19 that represents a material or substantial issue in nonfederal
20 or nonbankruptcy federal law. I think we're right in the
21 wheelhouse.

22 THE COURT: Even if it did, if you will, your
23 alternative argument is what practical purpose would be served
24 by withdrawing the reference if the very issue is already
25 before the Second Circuit.

1 MR. SHEEHAN: Correct. That is exactly right. I need
2 not go any further.

3 THE COURT: So let me go back to Ms. Chaitman. What
4 about the, and I am ashamed I forgot about that appeal, but
5 what about that?

6 MS. CHAITMAN: Well, your Honor, the appeal is of
7 Judge Lifland's holding that net equity as defined in SIPA
8 permits the netting out for purposes of allowance of a claim.
9 In the decision Judge Lifland expressly held that he was not
10 dealing with any defenses to a clawback action because the
11 clawback actions hadn't been filed and they were not before
12 him.

13 THE COURT: What is the nonbankruptcy issue in the
14 defense to the clawback?

15 MS. CHAITMAN: The nonbankruptcy issue is, your Honor,
16 that under all of the securities laws -- the federal securities
17 law, the Securities and Exchange Act -- customers are entitled
18 to the statement balance shown on the statement they receive
19 from their broker. This is a fundamental issue of
20 nonbankruptcy federal securities law.

21 THE COURT: Why is that not embraced by the issuance
22 of appeal?

23 MS. CHAITMAN: Because there were no clawback actions
24 filed. The issue for purposes of the appeal is whether a
25 customer claim can be based on the net investment over a

1 50-year period, or whether the customer claim must be the last
2 statement. There was no issue of whether the trustee could sue
3 on a fraudulent transfer theory. People who took withdrawals
4 from their accounts from their SEC regulated broker dealer
5 thereby reducing the debt of the broker to the customer. That
6 issue was specifically not addressed by Judge Lifland and he
7 expressly stated, I am not addressing any of those issues
8 because no clawback complaints have been filed. That issue
9 only arises, your Honor, in this case because the trustee has
10 sued on a clawback theory, a customer who simply took
11 withdrawals from his SEC regulated broker dealer account, which
12 reduced the debt from the broker to the customer.

13 THE COURT: What, if anything, is going on in
14 Bankruptcy Court while that appear is pending?

15 MS. CHAITMAN: Well, there are all kinds of issue in
16 the Bankruptcy Court to which certainly I can speak to.

17 THE COURT: In terms of your specific --

18 MS. CHAITMAN: Nothing.

19 THE COURT: You want to wait until and I presume they
20 want to wait until that issue is decided on appeal, yes?

21 MS. CHAITMAN: Well, no, your Honor. We have until
22 October 3rd to answer the complaint and I intend to make a
23 motion to dismiss and one of the grounds on which I intend to
24 move to dismiss is that the federal securities laws bar these
25 actions. That is an issue on which there has to be withdrawal

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1 because the Bankruptcy Court as an Article I court does not
2 have the competence to determine that issue.

3 THE COURT: I am thinking now just practicalities. If
4 nothing is going on while the appeal is pending but a time has
5 been set in October when if appeal is not decide you will have
6 to go forward and make your motion and it is then that the
7 nonbankruptcy issue, putting aside the other issues we talked
8 about, but this nonbankruptcy issue will become real so to
9 speak. Why isn't that the time, if any, to withdraw the
10 reference?

11 MS. CHAITMAN: I don't think that one has anything to
12 do with the other, your Honor. I don't think that Mr. Sheehan,
13 for example, would say that if Judge Lifland is reversed on
14 appeal by the Second Circuit that he would automatically
15 dismiss all the clawback actions. I don't think there is the
16 connection that Mr. Sheehan is leading you to believe there is.
17 These are separate complaints that are not dependent upon the
18 Second Circuit decision.

19 THE COURT: Let me hear from Mr. Sheehan.

20 MR. SHEEHAN: Your Honor, certainly I wasn't trying to
21 mislead the Court in what my position is. The final last
22 statement issue which is the bread and butter of Ms. Chaitman's
23 argument was argued and is now pending before the Second
24 Circuit.

25 Indeed, to suggest that Judge Lifland was not aware of

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1 the fact that the trustee may engage in avoidance actions,
2 because we did have statute of limitations September of 11th
3 and we filed, would not be accurate. If I may be so bold to
4 read from decision of Judge Lifland at page 137 at 424 B.R. he
5 states, "The net investment method allows the definition of net
6 equity and the trustee's powers to avoid and recover property
7 contained in the same statutory framework to be interpreted
8 with preferred continence." In other words, he was fully aware
9 of what we were going to do, which we had already done in other
10 cases that have initiated prior this opinion and he was fully
11 aware of the fact that we would utilize those avoidance
12 powers -- to what? -- recover the moneys.

13 That, as your Honor knows, in your Dryer opinion, we
14 didn't have an earthquake here. We had a tsunami. What we
15 have here is very, very unfortunately, and Ms. Chaitman is
16 right, innocent investors. If you want to add up all 900 of
17 them, they \$4.6 billion of other people's money. I don't have
18 the trustee to turn a blind eye to that and not try to get it
19 back. Because if he didn't, those people, those other people,
20 those net losers whose \$4.6 billion was there, would never get
21 it back. So that is what is going on in terms of avoidance
22 statute.

23 I would agree with Ms. Chaitman if in fact the Court
24 were to decide, the Second Circuit, that the final statement
25 method, it is a net equity calculation, is to be utilized in

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1 terms of measuring net equity and what we then would end up
2 with would be the \$20 billion of the cash that is missing, 4.6
3 of it is in the hands of 900 some odd people. We're trying to
4 get all 20 back. So we're doing that, utilizing the bankruptcy
5 and to fill the fund, work together, agreed, disagree, 2(c)(3)
6 work perfectly together. The idea is to build the funds that
7 reduces the avoidance powers. That is why Judge Lifland called
8 it preferred continence.

9 So at the end of the day we would then say, No, the
10 fund isn't 20. It is \$65 billion because then we would be
11 honoring the fictitious profits, which is what the 65 billion
12 represents, which is why that last statement was rejected in
13 the first place.

14 So in any event, your Honor, I cannot emphasize
15 enough --

16 THE COURT: What you are saying in the very broadest
17 sense is that dealing with the question of transfers back
18 between or really the division of property between innocent
19 people on both sides is standard fair in Bankruptcy Court.

20 MR. SHEEHAN: I couldn't agree more. It is something
21 the Bankruptcy Court, as your Honor well knows from the Dryer
22 opinion and we worked with the bankruptcy judge there as well,
23 it goes on every day. It is exactly what we do. It is not a
24 pleasant talk. I am not suggesting that it is, but it is the
25 only crude way that the law affords to us try to rateably --

1 rateably -- distribute the funds.

2 MS. CHAITMAN: May I briefly?

3 THE COURT: Please, of course.

4 MS. CHAITMAN: We heard a great deal of garden variety
5 bankruptcy cases. This is in no way a garden variety
6 bankruptcy issue. Yes, the Bankruptcy Code incorporates the
7 fraudulent transfer laws, but this is the first time in SIPA's
8 history that a SIPC trustee has sought to hold a SEC regulated
9 customer liable for taking money out of his account when his
10 statement showed that he owned real securities. That is a SIPC
11 issue, your Honor. It is a threshold SIPC issue that is
12 dependent upon the Court's interpretation of the securities
13 laws. The federal security laws mandate that customers are
14 entitled to rely upon their statements and that the broker owes
15 them the balance on their statements. So if I as a customer
16 withdraw money from my SEC regulated broker dealer, whatever
17 that sum is, the broker has reduced its debt to me, that is not
18 a fraudulent transfer. That is an issue that your Honor has to
19 determine.

20 To say this is a garden variety bankruptcy issue is
21 overlooking who the parties are and what the withdrawal was.
22 Fraudulent transfers are incorporated into the Bankruptcy Code,
23 but there has never been a fraudulent conveyance action with a
24 reported decision where someone in this situation was held
25 liable for taking money out of his account where he had

1 existing securities traded on the New York Stock Exchange.

2 This is an issue which has vast impact for this country.

3 Because if customers of an SEC regulated broker dealer who do
4 nothing than take mandatory IRA withdrawals and pay taxes on
5 them can be sued on a fraudulent transfer, the securities
6 markets will collapse. This is not a bankruptcy issue, your
7 Honor.

8 MR. BELL: Your Honor, if I might?

9 THE COURT: Sure. I was struck by the analogy both
10 sides to whether this is or is not a garden variety issue. My
11 suspicion is that the familiarity of any New York lawyer with
12 garden varieties is quite limited. But in any event --

13 MR. BELL: I live in Virginia, your Honor, so we have
14 green down there. I used to live in New York when I grew up.

15 Judge Marrero of this bench in the Adler Coleman case
16 on the appeal Jackson v. Mishkin, which we cite in our papers,
17 discussed at length in an 80-page opinion the appeal from Judge
18 Garrity similarly lengthy opinion an action by a trustee.

19 THE COURT: I think judges should be paid by the page.

20 MR. BELL: Well, your Honor, I don't know in the light
21 of what is going on in Congress down in Washington there is
22 going to be much paying anybody.

23 THE COURT: So let's get back to the issues.

24 MR. BELL: There clearly are fraudulent transfer
25 actions that are cited to you in SIPC's brief. The Tenth

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1 Circuit in the Davis v. Gillenwater case addressed 547, 548
2 actions and the viability of bringing them in a super
3 proceeding in the Bankruptcy Court. And within the SIPC
4 proceedings Old Naples, which is cited also to you, had Ponzi
5 fraud and there were fraudulent transfer actions there. So I
6 think Ms. Chaitman is not correct in that statement and I just
7 want to refer you to our brief. Thank you.

8 THE COURT: You've all given me some very good issues
9 to think about.

10 Ms. Chaitman, you want to say something more?

11 MS. CHAITMAN: I see how hard and long you have worked
12 today, but your Honor --

13 THE COURT: I am happy to hear you but I do have
14 another matter after this one.

15 MS. CHAITMAN: Oh, my goodness.

16 I wanted to make the point Stern v. Marshal, which
17 came down after we had filed our motion, and I think that Stern
18 v. Marshal stands for the proposition that the Bankruptcy Court
19 does not have jurisdiction to hear any of these fraudulent
20 transfer cases because they were not filed in connection with
21 the determination of a claim. These were not counterclaims to
22 approve a claim. I think that these are state law fraudulent
23 transfer claims which are beyond the jurisdiction of the
24 Bankruptcy Court under the Stern v. Marshal express holding.

25 MR. BELL: Your Honor, if I might again. Stern v.

1 Marshal does not effect the trustee's avoidance action against
2 Mr. Greiff. Mr. Greiff filed a claim in the proceedings. The
3 trustee's complaint against him is part of the resolution of
4 the debtor-creditor relationship. Clearly the holding in Stern
5 v. Marshal and the conclusion that Chief Justice Roberts wrote
6 says this is a -- there is one limit respect we're dealing with
7 157(b)(2) and that was the tortious interference state law
8 cause of action as a counterclaim. And the Court says that the
9 Bankruptcy Court lacked the constitutional authority to enter a
10 final judgment at that time. But the Court also discussed
11 Langencamp, which we have in our papers, and clearly Mr. Greiff
12 filed a claim, submitted himself to the equitable jurisdiction
13 of the court. He received \$2.8 million of other people's money
14 and the trustee is obligated to pursue that in unraveling the
15 debtor-creditor relationship as to that particular defendant,
16 Mr. Greiff.

17 THE COURT: The wonderful thing about the adversary
18 system is that the competing sides can read the same case and
19 say that it clearly and unequivocally stands for two opposite
20 things. I will read it.

21 MR. BELL: Thank you, your Honor.

22 THE COURT: What I was starting to say was I do think
23 it is important for the litigants so I will give you an idea
24 when I will decide this. The first of these withdrawal
25 substantive issues under the withdrawal motion that I have to

1 decide and there is another substantive motion that I am going
2 to be deciding in the Katz matter in August. There are other
3 motions of withdrawal that are pending, one of which I am
4 committed to decide by August 15th, and there are some that
5 need to be argued. So I think to be consistent with my own
6 calendar and to give you some fair idea, I will decide this
7 motion by September 15th. I doubt that I will decide it before
8 then. September 15th will be the time.

9 I thank counsel for all the parties. This matter is
10 adjourned.

11 MR. BELL: Thank you, your Honor.

12 MR. SHEEHAN: Thank you, your Honor.

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