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Proactive Madoff Victims May Recoup Losses through Insurance

Tangled web of statutory limitations, competing coverage policies means plaintiffs must act quickly

Washington, D.C. – Still reeling from the aftermath of Bernie Madoff’s \$50 billion Ponzi scheme, victims are determining next steps in trying to recover lost investments, as defendants are considering claims against third parties and other defense strategies. One very important and potentially complicated option is identifying, preserving and maximizing the insurance assets of defendants and third parties to pay burgeoning defense costs and to fund eventual settlements or other liabilities.

“The misconception out there is that there’s no real recourse through insurance claims,” said Scott Gilbert, a name partner at Gilbert Oshinsky, who has settled high-profile insurance cases and won multimillion dollar settlements for clients.

“This is not the case at all. We believe that there are hundreds of millions of dollars out there to be recovered through insurance claims. The most important thing that claimants and potential defendants can do right now is to understand how and when to effectively navigate this insurance space and do so expeditiously to minimize conflicting claims and insurer defenses.”

Jerry Oshinsky, also a name partner at the firm, has handled landmark cases involving directors and officers of Enron, Tyco, and Adelphia, and other major companies, and believes that cases such as Madoff’s take on a life of their own.

“Former investors need to reserve and preserve their rights because there are conflicting interests here: Madoff’s team, potentially responsible third parties, the victims and the insurance companies who are going to bring up loop holes and drag this matter out,” Oshinsky said. “Insurance assets should be analyzed and preserved immediately,” he added.

Both attorneys mention different types of insurance former Madoff investors and others can tap into such as Directors’ and Officers’; Errors and Omissions; Fidelity; Credit; Liability and other types of insurance coverage that factor greatly into the defense and eventual resolution of these claims.

“Many of the parties involved in this are not aware that there are different buckets of insurance they can tap into and that these buckets impact each other, so if you use one during the defense phase of the case,

it can use up monies that could have gone toward liabilities later in the case,” Gilbert said. Thus, to the extent possible, plaintiffs and defendants may want to coordinate in analyzing and ultimately accessing applicable insurance funds.

Additionally, victims’ and defendants’ geographic locations also impact their insurance recourse as state coverage laws may differ. Both Gilbert Oshinsky attorneys advocate that entities implicated in the Madoff controversy seek counsel that knows the personalities of the primary insurers and reinsurers that will be involved in the aftermath of the scheme – big names such as AIG, CNA, Chubb, London and others.

“The best advice in this situation is to move quickly to ensure that you fully understand, protect and effectively pursue these important assets” said Gilbert.

About Gilbert Oshinsky LLP

Based in Washington, DC, with offices in Los Angeles and Austin, Gilbert Oshinsky LLP is a law firm that represents a wide range of clients, including corporations, partnerships, non-profit organizations and individuals in complex disputes, including high-stakes litigation, class actions and ADRs. Best known for representing policyholder interests in insurance coverage matters, Gilbert Oshinsky LLP also has an active public interest practice that specializes in complex multi-plaintiff actions involving cutting-edge issues.