

LEGAL UPDATE

June 1, 2009 By: Richard Levy, Jr.

THE MADOFF SECURITIES LIQUIDATION: THE FIRST SIX MONTHS

The liquidation case for Bernard L. Madoff Investment Securities LLC (“BLMIS”), which arises from what may be the largest fraud in American history, is now almost six months old. This article reports on the general status of the case and summarizes important recent developments, including matters relating to the administration of customer net equity claims and the pursuit and settlement of “clawback” claims by the Trustee.”

I. BACKGROUND

A. Commencement of the Case

On December 11, 2008, the SEC filed a complaint against BLMIS in the U.S. District Court for the Southern District of New York (“District Court”), seeking relief under the federal Securities Investor Protection Act (“SIPA”). On December 15, 2008, the District Court ordered the matter to proceed as a SIPA liquidation, and transferred the case to the U.S. Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”) for administration of the liquidation proceedings. The liquidation case is now pending in the Bankruptcy Court before Judge Burton R. Lifland under Case No. 08-01789 (BRL). Irving H. Picard, Esq., a New York bankruptcy attorney, was appointed as the SIPA trustee to oversee the liquidation proceedings (“Trustee”).

The SIPA case in the Bankruptcy Court provides a centralized forum for the administration of the estate of BLMIS, the adjudication of contested customer claims, and the ratable distribution of any recoveries that the Trustee may realize for the benefit of the aggrieved customers. The court will also be the presumptive home forum for proceedings by the Trustee to seek the recovery of distributions or redemptions received by BLMIS investors within relevant statutory periods, on the theory that such payments are subject to

disgorgement either as fraudulent conveyances (under federal bankruptcy law and applicable New York state law, which could reach payments made as long as 6 years before the commencement of the liquidation case) or as preferences (under federal bankruptcy law, which reaches payments made within 90 days before the commencement of the case [or one year in the case of transfers to insiders of the securities firm]).

B. SIPA Protection and Compensation to Aggrieved Customers

SIPA provides protection to “customers” of the affected stock broker who hold allowed “net equity claims.” Under existing jurisprudence, only direct Madoff investors are “customers” who may be compensated from the liquidating estate for their “net equity claims” in the SIPA case. Thus, persons who invested through feeder funds are unlikely to be treated as “customers” for purposes of SIPA. (Those indirect customers’ claims, however, if allowable, likely would be treated only as general unsecured claims and therefore relegated to a smaller source of recovery, the general estate [consisting of the non-customer property] of BLMIS.

Some customer losses may be entitled to compensation provided by the Securities Investor Protection Corporation (“SIPC”), a federally chartered corporation that provides protection to customers of failed securities brokers. SIPC coverage is limited to \$500,000 *per customer* for “claims for securities,” including up to \$100,000 for “claims for cash.” For purposes of SIPC coverage, the customers eligible for such compensation are persons or entities who had securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC, however, does not insure against market risk. Subject to the limits of coverage per customer,

SIPC protection only applies to securities positions held at the affected broker-dealer as of the time that a SIPA proceeding is commenced. The SIPC protection is provided in the form of cash advances from SIPC to the SIPA trustee in the liquidation proceeding for the purpose of compensating allowed customer net equity claims either through the purchase of securities as may be required to satisfy the customer claims or through cash payments, in accordance with the provisions of SIPA and as authorized by the Bankruptcy Court. The Trustee for BLMIS has stated that he will treat customer claims as “claims for securities,” giving credit to customers’ expectations that they had invested in securities. As the Trustee has confirmed in public statements, BLMIS did not engage in any securities trading and thus had no customer securities at the time of the commencement of the SIPA case. Thus, the Trustee intends to compensate allowed claims only in the form of cash.

C. Customer Net Equity Claims

Among his other statutory responsibilities, the SIPA trustee is responsible to review all claims and determine the eligibility of each claim to share in the SIPA recovery process. The SIPA trustee is reported to have mailed notices and claim forms to more than 8,000 persons who were reflected in BLMIS records as having had customer accounts with, or having been creditors of, the firm during the year prior to the commencement of the case. Claims likely will be filed by persons who may hold claims or debts from prior time periods.

In a SIPA liquidation, customers’ claims for “net equity” (the value of securities and cash in their accounts at Madoff as of the commencement of the case – here, December 11, 2008 – less any amounts owed to the firm at that time for the purchase of securities) are entitled to payment from the pool of “customer property” (usually the cash and unregistered securities at any time received, acquired or held by the debtor-broker on account of customers, plus the proceeds of any customer property transferred by the broker or unlawfully converted by the broker). The customer property pool is not available to satisfy the claims of general creditors of the broker. Thus, customers holding net equity claims are preferred creditors of the broker in the sense that they may be compensated ratably for their customer net equity claims from the customer property pool and, to the extent of any deficiency remaining after distributions from that pool, ratably from the broker’s general estate. (Such recovery is

separate from any recovery on claims other than customer net equity claims that the claimant may assert against the debtor which, if allowed, are entitled to ratable distribution from the proceeds of the general estate.) The customer property pool will also include the proceeds of “avoidance” or “clawback” actions that the trustee may commence, as well as the proceeds of certain other business property of the debtor.

II. SUMMARY OF RECENT DEVELOPMENTS

A. Asset Recovery

As of late May 2009, the Trustee stated that he had recovered more than approximately \$1 billion in customer property (not including proceeds of certain clawback settlements) which will be the source of ratable distributions to all allowed customer net equity claims (in addition to SIPC advances to eligible customers). The Trustee has issued numerous demands to recipients of alleged preferences and fraudulent conveyances, in which the Trustee seeks to obtain recoveries without having to commence formal litigation proceedings. The Trustee also has commenced a number of clawback actions against certain large trust funds and feeder funds which seek recovery of tens of billions of dollars in alleged preferences and fraudulent conveyances. These actions include complaints against the Fairfield Greenwich funds, the Kingate funds, the Chais family and related entities, and the Picower family and related entities. The complaints reflect that, based on particular facts and circumstances going to the nature of the relationship between BLMIS and the defendant(s) on clawback claims, the Trustee may seek recovery of both principal and fictitious profits.

B. Claims Processing

In mid-May 2009 the Trustee reported that he had received approximately 8,850 claims, which relate to more than 3,600 accounts. As of May 28, 2009, the Trustee reported on his web site that he had determined 251 claims, all of which were allowed. The cumulative allowed amount of those claims is approximately \$759.5 million, for which SIPC had committed approximately \$122.1 million in SIPC coverage for the affected claimants. The holders of these allowed claims also are entitled to share ratably in the pool of BLMIS customer property that ultimately will be available for distribution to allowed customer claims.

C. Record Reconstruction

The Trustee has stated that there were almost no “electronic” records at BLMIS and that his forensic team had to “digitize” the information that was contained on paper, microfilm and microfiche records held at BLMIS, along with details from additional information provided by banks, third parties and customers. The Trustee has stated that in order to evaluate claims and assess possible clawback exposure, he will reconstruct *all* customer accounts “from the ground up,” using all available records held at BLMIS, records obtained from third parties (including banks), and records supplied by customer claimants. The costs of that ongoing and time-consuming effort, as with the other forensic costs of the case, will be borne solely by SIPC and will not be charged to the customer property pool from which ratable customer recoveries will be paid.

Despite early questions about the extent and accuracy of records at BLMIS, it now appears that the Trustee has extensive records that will allow him to engage in detailed analyses of customer accounts and transactions, as well as to investigate and pursue clawback claims. For example, in his recently-announced “Hardship Program” (discussed below), the Trustee stated that he had records for accounts dating back to January 1, 1996 that would allow him to engage in expedited determination of claims for accounts opened within that period. In addition, the clawback complaints filed thus far by the Trustee include highly detailed schedules of transactions for cash deposits and withdrawals from the defendants’ BLMIS accounts going back, in some instances, for several decades.

D. Net Equity Claims / SIPC Coverage; Bar Date

SIPC has committed itself to advance funds to eligible customers immediately upon the allowance of their claims (and the execution of a release by the customer). SIPC believes that it will have sufficient funds to make advances to all eligible Madoff claimants. SIPC recently resolved to enlarge the reserve fund through increased assessments on SIPC member brokers.

The Trustee has been urged by many customers to use the last monthly BLMIS statement as the measure of customer net equity. The Trustee declines to do so because, he says, that would unfairly benefit longer term customers at the expense of shorter term customers. Because there

were no trades and no real profits at BLMIS, such an approach, according to the Trustee, would allow those who received compounded returns at substantially higher rates to obtain disproportionate recoveries. He does not believe that this is the “fairness” required by SIPA. Echoing comments of the Trustee, SIPC President Stephen Harbeck has also stated that the use of the last account statement for SIPA claim measurement “would give the thief the final say as to who wins and loses, and that is just not the law.”

The reliance on account statement values as the measure of a customer’s SIPA claim, instead of the net cash in/out calculation, has a basis in the definition of “customer net equity” in the statute. This issue has not been the subject of specific adjudication in any prior cases. There is, however, language in existing jurisprudence and in the legislative history of SIPA that may be read to support the position. The issue may require litigation in order to obtain a definitive determination for purposes of customer treatment in the BLMIS case.

The bar date for the filing of all claims against BLMIS is July 2, 2009. Under prevailing case law, this date is not subject to extension. Thus, as a general proposition, claims received by the Trustee after that date will not be eligible to participate in recoveries from the estate.

Timely-filed claims may be subject to amendment after the filing deadline in accordance with applicable bankruptcy law, but only to the extent that the changes relate back to transactions and occurrences covered by the original filing. New bases or theories of recovery asserted for the first time in an amended claim may be disallowed.

There is an open question concerning the treatment of repayments of clawback liabilities by persons who fail to file SIPA claims by July 2, 2009. Under bankruptcy law, persons who disgorge preferences or fraudulent transfers normally would hold “resulting” claims under which the amounts of their repayments would be treated as claims eligible to share in distributions from the debtor’s estate. There is, however, no definitive case law on this issue in the context of a SIPA liquidation. As the Bankruptcy Court previously denied as premature a motion for clarification of that issue in the BLMIS case, the issue remains uncertain.

E. Hardship Program

On May 8, 2009, the Trustee announced the establishment of a “Hardship Program” to expedite the handling of SIPC claims for individual Madoff claimants who suffer from hardships based on financial, medical or other circumstances. A claimant who qualifies for hardship treatment will be entitled to receive expedited consideration by the Trustee of his or her SIPC net equity claim. To the extent that a hardship claim is allowed, SIPC cash advances will be paid on the covered portion of the allowed claim, up to the lesser of the allowed portion of the claim or the maximum applicable SIPC coverage limit.

As established, the Hardship Program requires the Trustee to determine, first, an individual claimant’s eligibility for treatment as a hardship case. If the Trustee agrees to treat the claimant as a hardship claimant, the Trustee will then determine whether to allow or object to that claimant’s SIPC net equity claim in whole or in part. (The claims of persons who are not entitled to hardship status will be determined by the Trustee in the ordinary course of his claims review process.) The Hardship Program also provides for a hardship claimant who disputes the Trustee’s determination of the SIPC claim to receive an early payment of SIPC advances for the portion, if any, of the claim to which the Trustee does not object (with such payment limited to the extent of applicable SIPC coverage for the undisputed part of the claim), while leaving to a later time the resolution of any disputed portion of the claim.

The Trustee stated that for accounts opened at BLMIS after January 1, 1996, he will “endeavor” to make a determination of a hardship claimant’s claims within 20 days after claimant is determined to be eligible for hardship status. For accounts opened during earlier periods, the Trustee is working to “reconstruct” the records of BLMIS.

F. Clawback Recoveries

In explaining his view of the case in a May 14, 2009 interview, the Trustee emphasized that he construes his statutory duty to require him to treat *all* customers fairly and to maximize the pool of customer property available for distribution. This duty includes, as he sees it, the responsibility to investigate and, where appropriate, to pursue recovery from persons who recovered “more than their fair share” from Madoff. Invoking the description of a Ponzi scheme, Picard reiterated, as

he has on other occasions, that those who received excessive recoveries were “paid with other persons’ money.” He believes that Congress, under SIPA, has mandated that such funds be returned so that all customers will share equally. The Trustee’s publicly-stated intentions regarding the pursuit of avoidance claims have generated considerable public comment and outcry (which is beyond the scope of this article).

1. The Trustee’s Posted “Guidance” on Clawbacks

On April 30, 2009, the Trustee issued written “guidance” relating to his general approach to the pursuit and settlement of claims to recover preferences and fraudulent conveyances. The Trustee reiterated his previously announced position that the decision on whether he will pursue non-feeder fund customers on avoidance claims will be decided on an individual basis, not on any categorical basis. The Trustee also confirmed that he will consider a variety of factors in determining whether to commence litigation against non-feeder fund customers. The Trustee listed the following non-exclusive factors:

- As a general proposition, the Trustee expects repayment of all amounts that may be recoverable as preferences (payments received by the customer within 90 days before December 11, 2008, *i.e.*, payments made by BLMIS on or after September 12, 2008).¹ The Trustee’s complaints in pending clawback actions confirm his intention to pursue the recovery of both principal and false profits *as preferences*.
- It may be possible for a customer to offset preferences against the amounts that could be advanced by SIPC on account of the customer’s allowed claim. As indicated below in the description of the Optimal Funds settlement, the Trustee has, in fact, employed this mechanism to offset amounts payable by a clawback target with funds that otherwise would have been advanced to the target by SIPC.

¹ While the Trustee’s statement does not address this point, the time of a preference typically is measured as the date on which the transfer was made by the debtor. Under controlling Supreme Court jurisprudence, for transfers made by check, the operative date of the transfer is the date on which the check is honored by the bank, not the date on which the debtor issued the check or the payee physically received the check.

- For fraudulent transfer claims, the Trustee will look first to whether the customer was a net depositor or a net redeemer based on the cumulative amounts deposited and withdrawn over the life of the customer's account. The Trustee indicated that he is less likely to commence an avoidance action against a net depositor. (Although the Trustee says he will calculate the customer's net depositor/net redeemer status based on the entire history of deposits and withdrawals for the account, the applicable New York fraudulent conveyance statutes limit the Trustee to seek recovery only of transfers made within the six years preceding December 11, 2008.)
- The Trustee will consider whether an avoidance action will create an "undue hardship" on the customer whose receipts may be avoidable. If a hardship would result, the Trustee states that he is unlikely to commence an avoidance action. For purposes of testing a customer's hardship, the Trustee will consider, for example, the amount in issue and the particular facts that give rise to the hardship.
- The Trustee will consider whether there are facts and circumstances, such as the customer's lack of good faith, that make a transfer more or less susceptible to recovery. The Trustee states that he is more likely to commence an avoidance action where the recipient's conduct indicates a lack of good faith.
- The Trustee will consider whether the recipient of the transfer has potentially valid defenses.
- The Trustee states that he will not commence litigation against a transferee if, following issuance of a demand letter by the Trustee, the recipient contacts the Trustee to discuss the facts and circumstances surrounding the transfer and possible settlements. In that event, the Trustee will withhold the commencement of an avoidance action against the recipient while such discussions are pending. (If such discussions commence and continue beyond the two-year limitations period within which the Trustee must commence litigation, we anticipate that the Trustee will request an agreement to toll that period so long as good faith settlement discussions are continuing.) The Trustee

states that he is more likely to commence an avoidance action if the recipient of a demand letter does not open discussions with the Trustee.

- The Trustee is open to receiving any other facts and circumstances that may inform his decision on whether or not to commence an avoidance action against a recipient of funds.

The Trustee's recent pronouncements, coupled with the initial settlement reached with the Optimal Funds (described below) make clear that recipients of clawback recovery demands will have an opportunity to "tell their story" so that the Trustee can then explore possible settlements and consider surrounding circumstances that will inform his decision on whether or not to pursue litigation. This process will include the opportunity for a customer to explain why the customer's financial or other hardship would make the pursuit of a clawback through litigation either a futile or non-cost-effective alternative for the Trustee. The Trustee indicated that he would seriously consider not pursuing a clawback claim if the target customer shows the existence of defenses, futility or other legitimate circumstances beyond hardship.

2. The Trustee's First Clawback Settlement

On May 22, 2009, the Trustee filed his first proposed settlement of clawback claims. The settlement resolves clawback liabilities of two Bahamas-based feeder funds affiliated with Banco Santander (the "Optimal Funds"). The settlement was reached before the Trustee commenced litigation against the funds. The Trustee's motion for approval of the settlement is noticed for a hearing on June 16, 2009.

Although the Optimal Funds settlement involves "feeder funds" and not individual customers, the terms of the settlement are informative about how the Trustee may proceed with future clawback demands and settlements. Clearly, the Trustee is prepared to settle claims without litigation and for something less than the face value of the exposure where warranted by facts and circumstances (although the amount of any settlement discount cannot be predicted on any categorical or other basis). The Trustee will conduct careful diligence into the facts surrounding the transactions and the bases asserted by a target in support of a settlement, including an examination of the extent (if any) to which the target was complicit in or had knowledge

of the Madoff fraud. The Trustee's threshold for settlement of clawback claims, at least in cases involving substantial settlements with institutional clients that lacked any prior involvement in or knowledge of the fraud, may remain at a very high percentage of the face amount of the exposure. Finally, the terms of the Optimal Funds' settlement indicates that the Trustee will allow setoffs of a customer's entitlement to SIPC coverage against amounts to be paid in settlement of clawback claims by the affected customer.

The Trustee issued a very short press release on May 26, 2009 announcing the settlement, but the release contained little substantive information on the settlement. However, the Trustee's motion for approval of the Optimal Funds settlement contained both a detailed description of the settlement and its complete terms. The motion papers and settlement agreement reflect the following:

- One of the settling funds had net positive cash equity of approximately \$1.4 billion based on cumulative cash in/cash out, but also had exposure of approximately \$151 million for payments received within the 90-day preference period. For this target: (1) the trustee agreed to accept a settlement payment of 85% of the preference claim (approximately \$129.1 million); (2) the amount of the preference settlement payment will be added to the customer's net positive cash equity as of the start of the liquidation case, and the claimant will have an allowed claim for the total; and (3) the allowed claim amount will be entitled to treatment as a SIPA claim for securities and will receive a cash advance of \$500,000 as SIPC coverage, which may be offset by the Trustee against the required settlement payment.
- The second settling fund was a net redeemer for approximately \$96.5 million and also had preference exposure of approximately \$125.1 million and fraudulent conveyance exposure of \$35 million. For this target: (1) the trustee agreed to accept a settlement payment of 85% of the preference (approximately \$106.3 million) in a six-month installment payment arrangement; (2) no separate payment was made on account of the fraudulent conveyance exposure; (3) the claimant will have an allowed SIPA claim for approximately \$9.8 million, which represents the excess of the settlement payment over the

net negative cash equity in the account as of the commencement of the SIPA case; and (4) the allowed claim amount will be entitled to treatment as a SIPA claim for securities and will receive a cash advance of \$500,000 as SIPC coverage, which may be offset by the Trustee against the final required settlement installment payment.

- Of particular note, the Optimal Funds settlement contains a form of "most-favored nation" clause which sets forth the settling parties' intention that the settlement is to serve as a "minimum benchmark for future settlements of similar [preference] claims by the trustee." If the Trustee settles a clawback action against a single target or a group of commonly controlled defendants for an aggregate settlement amount of at least \$40 million, but the payment is less than 85% of the Trustee's claims, and the circumstances of the clawback claims and the underlying facts are "similar" to the Optimal Funds settlement, the Trustee is required to remit to the Optimal Funds a portion of the settlement amount paid by the Optimal Funds so that the net percentage exposure of the Optimal Funds for their settlement will be equal to the subsequent settlement payment measured as a percentage of the clawback exposure. The Optimal Funds settlement identifies the following "non-exclusive factors" to test the similarity of settlements for this purpose: (1) the ability of the target or group of targets as a whole to pay; (2) nature of the clawback (preference, or fraudulent conveyance to recover principal or profits); (3) jurisdictional issues; (4) the target's(s') knowledge of or complicity in the Madoff fraud; and (5) the posture of the litigation by the Trustee against the target or group of targets. Any dispute over the qualification of a settlement as "similar" will be subject to resolution by the Bankruptcy Court. This "most-favored nation" provision appears to be aimed at institutional targets, such as feeder funds, as compared to individual investors. There is, however, is no assurance at this time as to whether the Trustee will insist on a similar figure for settlements of individual clawback liability.
- The Trustee's motion for approval of the settlement noted that while the settlement addresses a resolution of "textbook

preferences,” other issues warranted a settlement for less than the full exposure, including the offshore nature of the funds, difficulties in collecting a judgment and other unspecified complexities surrounding the litigation.

- Finally, the Trustee’s motion also recited that the Trustee “conducted a confirmatory investigation, including a review of documents made available by [the targets] that related to, among other things, due diligence conducted by [the targets]. On the basis of that review, the Trustee concluded that [the targets] were not complicit in the fraud perpetrated by [BLMIS] and did not have actual knowledge of the fraud, and based on the review the Trustee does not believe that the conducts, acts and omissions of [the targets] provide grounds to assert any claim against [the targets] (other than the [Trustee’s] avoiding power claims), or to disallow any claim that [the targets] may have against [BLMIS].” The settlement, however, contains an escape clause in the event that the Trustee obtains new information that would have materially affected his decision to enter into the settlement.

G. Bankruptcy Proceedings Involving Bernard Madoff

Acting with leave granted by U.S. District Judge Louis Stanton (the judge who previously imposed a

freeze on the assets and property of Bernard Madoff in connection with the commencement of the SEC proceedings and the SIPC liquidation case for BLMIS), a group of Madoff victims commenced an involuntary Chapter 7 liquidation case against Mr. Madoff in the Bankruptcy Court on April 13, 2009. The Bankruptcy Judge to whom Mr. Madoff’s personal case was assigned, Burton R. Lifland, is the same judge who is hearing the BLMIS liquidation case. Acting at the direction of the Bankruptcy Court, the U.S. Trustee for the Southern District of New York appointed Alan Nisselson, a New York bankruptcy attorney, as the interim Chapter 7 trustee of Mr. Madoff’s bankruptcy estate.

The Chapter 7 petitioners also filed a motion in the BLMIS liquidation case that seeks the transfer to the New York Bankruptcy Court of bankruptcy proceedings commenced in Florida that are ancillary to the United Kingdom liquidation case for Madoff Securities Ltd., BLMIS’s overseas affiliate.

Motions are also pending under which Mr. Madoff’s individual bankruptcy estate would be substantively consolidated with the BLMIS estate. This would have the effect of bringing Mr. Madoff’s personal assets into the BLMIS estate and making their proceeds available for distribution by the Trustee. Mr. Madoff’s personal creditors, if any, would become creditors of the BLMIS estate. The Bankruptcy Court has not yet ruled on the motions.

Pryor Cashman LLP actively represents a number of client groups in connection with the Madoff situation. The Firm provides advice and representation relating to the filing of customer net equity claims; victims' rights and remedies against third parties; issues involving possible claims that may be brought by the SIPA Trustee to recover preferences and/or fraudulent conveyances; insurance considerations relating to customer claims and losses; and the tax treatment of customer losses under United States and New York law.

For further information concerning the Madoff situation, please contact any of the following partners at Pryor Cashman LLP:

RICHARD LEVY, JR.

Bankruptcy
(212) 326-0886
rlevy@pryorcashman.com

MARK R. JACOBS

Bankruptcy
(212) 326-0470
mjacobs@pryorcashman.com

DONALD S. ZAKARIN

Litigation
(212) 326-0108
zakarin@pryorcashman.com

ERIC B. WOLDENBERG

Tax
(212) 326-0865
ewoldenberg@pryorcashman.com

Copyright © 2009 by Pryor Cashman LLP. This Legal Update is provided for informational purposes only and does not constitute legal advice or the creation of an attorney-client relationship. While all efforts have been made to ensure the accuracy of the contents, Pryor Cashman LLP does not guarantee such accuracy and cannot be held responsible for any errors in or reliance upon this information. This material may constitute attorney advertising. Prior results do not guarantee a similar outcome.

ABOUT THE AUTHOR



RICHARD LEVY, JR.

Partner

Direct Tel: 212-326-0886

Direct Fax: 212-798-6393

rlevy@pryorcashman.com

Richard Levy, Jr. heads the Bankruptcy, Reorganization and Creditors' Rights practice at Pryor Cashman. His experience includes all phases of cases under Chapter 11 and Chapter 7 of the Bankruptcy Code, bankruptcy litigation, civil litigation in federal and state courts, related counseling, and arbitration and mediation. Rich has represented debtors, creditors, official and unofficial committees (including committees of creditors, equity holders or retired employees), landlords, indenture trustees, labor unions, pension funds, and asset purchasers. He also has represented parties in state court insolvency and corporate dissolution proceedings.

Rich represented the indenture trustees of publicly-traded bonds in the Kmart, Global Crossing, Hayes Lemmerz, Owens Corning, and Quality Stores cases, among others. His experience also includes bankruptcy litigation on behalf of indenture trustees with respect to their contractual rights and obligations under their indentures including, for example, the charging lien litigation commenced by the official creditors committee against the indenture trustee in the Global Crossing case. He regularly supports and assists in the firm's representation of indenture trustees in other bankruptcy cases and default situations.

Rich regularly assists other practice areas of the firm by providing bankruptcy support and counsel in the structuring of business and commercial transactions, including, for example, financings, mergers and acquisitions, securitization transactions requiring non-consolidation or true sale opinions, intellectual property licenses, real estate leases and other executory contracts. He is also called upon to provide advice and representation with respect to the enforcement of judgments and debtor/creditor remedies under state law.

Rich has held special appointments in a number of bankruptcy cases. He served as counsel to the Chapter 11 Trustee appointed by the U.S. Bankruptcy Court for the District of Delaware in the asbestos-related bankruptcy case of United State Mineral Products Company, a leading manufacturer of spray-applied fire resistive materials for steel framed buildings and other structures. The case was one of the first to involve a successful restructuring of both asbestos-related personal injury claims and property damage claims under Section 524(g) of the U.S. Bankruptcy Code, and also is believed to be the first asbestos bankruptcy case to result in a successful reorganization under the auspices of a court-appointed trustee.

Rich has also served as the court-appointed official legal representative of future claimants in two other asbestos bankruptcy cases. He was the court-designated lead counsel in consolidated insolvency litigation proceedings arising from the Chapter 11 bankruptcy of a major airline. He also served as court-appointed examiner and, subsequently, as the post-confirmation creditor trustee in the Chapter 11 case of a well-known entertainer. Rich represented the official representative of retired employees appointed in the bankruptcy case of a metal products manufacturer, and the unofficial retiree committee in the reorganization case of a major meat-packing company. Rich served as a member of the Trust Advisory Board for the HLI Creditor Trust established in connection with the confirmed Chapter 11 bankruptcy plan for Hayes Lemmerz, Inc.

Rich graduated *magna cum laude* from Syracuse University College of Law in 1977, where he was elected to the Order of the Coif and served as Notes & Comments Editor of the Syracuse Law Review (1976-77). A 1974 graduate of Williams College (*cum laude*, with honors in Political Economy), Rich served as President of the Society of Alumni of Williams College – the oldest continuously-existing college or university alumni association in the world – from June 2006 to June 2008. During his term, Rich also chaired the Executive Committee of the Society of Alumni and attended meetings of the Board of Trustees of Williams College at the invitation of the Board.

Rich is AV Peer Review Rated, Martindale Hubbell's highest peer recognition for ethical standards and legal ability.