

10-1-2009

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Recommended Citation

UB Law Forum (2009) "Counting the Costs: Two Alumni Shine in High-Profile National Bankruptcy Cases,"
UB Law Forum: Vol. 22 : No. 1 , Article 6.

Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol22/iss1/6

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Counting the costs

Two alumni shine in high-profile national bankruptcy cases



Marc Hirschfield '92 now spends most of his work time helping to unravel the damage from the \$65 billion Ponzi scheme perpetrated by Bernard L. Madoff.

Between economic downturn and outright fraud, there are plenty of bankruptcy cases to go around lately. Two of the biggest – and most publicized – such cases in modern times have UB Law alumni at the center of a legal whirlwind.

Jeffrey L. Tanenbaum '76, a partner in the New York City firm Weil, Gotshal & Manges, worked on the General Motors reorganization under Chapter 11 of the U.S. Bankruptcy Code, and continues to work on the longstanding bankruptcy reorganization of Delphi Corp., the automotive parts supplier that GM spun off in 1999. **Marc E. Hirschfield '92**, a partner with the New York City firm Baker & Hostetler, is immersed in a series of claims resulting from the massive fraud perpetrated by now-jailed financier Bernard Madoff, who perpetrated the biggest Ponzi

scheme in history.

Most of Tanenbaum's recent work has been on the Delphi case.

"It's been a major struggle reorganizing that company," he says. "We always thought we would have that resolved long before GM resolved its financial dilemma."

As it turns out, Tanenbaum, who teaches a bankruptcy course as part of the Law School's New York City Program in International Finance and Law, was able to bring some of his experience with the Delphi case into the classroom.

"Delphi is a case study on what happens during bankruptcy," he says. "It has everything you can imagine, good or bad – labor negotiations, buyers of assets, hedge funds reneging on commitments to fund Delphi's exit from bankruptcy and litigation surrounding all of the above. It's a profile of every-

thing that could possibly happen in a bankruptcy case."

In the larger General Motors case, Weil, Gotshal represented the automaker as it worked to sell some assets, restructure its debt, cancel contracts, close some operations and secure financing to emerge from bankruptcy as a new legal entity.

The legal work is a massive undertaking, made possible, Tanenbaum says, only because "we're very team-oriented. When we have these large Chapter 11 cases, we reach out to all of the various departments in the firm. One of the reasons we are so successful at doing this work is that we have expertise throughout our firm in various departments in the bankruptcy arena. We have a paralegal team that works with us; we have an outside party that does the mass filings of pleadings for us, keeps track of pleadings that are filed, and manages the mass mailings that we have to do.

"There are a lot of meetings, numerous conference calls and significant negotiations. Bankruptcy is the essence of negotiation, trying to bring disparate interests together to agree on a distribution of the assets of a company, the wealth of a company, and doing that in compliance with the bankruptcy code. You have to look from the senior creditors to the most junior creditors, figure out the value of that enterprise, and distribute that value fairly to the various constituencies."

Tanenbaum says he and his colleagues recognize the historic import of the GM case. "It's a thrill to be part of a group that gets to work on situations involving companies that are icons of American corporate history," he says. "I represented Bethlehem Steel several years ago. We've represented Texaco, Continental Airlines, Eastern Airlines, Macy's. We've worked with some of the great companies of our time.

"It does make you feel you're doing something productive, and also that you're part of history, when you see



Jeffrey L. Tanenbaum '76 worked on the General Motors bankruptcy reorganization and continues to work on the longstanding reorganization of Delphi Corp.

what these companies have done wrong, where it all started, what the issues were and how they dealt with their problems.”

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Marc Hirschfield was working at another firm when he heard that the Securities Investor Protection Corporation had appointed a trustee to liquidate the holdings of Bernard L. Madoff Investment Securities – and that the trustee had joined Baker & Hostetler. Hirschfield, a bankruptcy specialist, moved to his new firm in March and now spends most of his work time helping to unravel the damage from the \$65 billion Ponzi scheme.

Hirschfield and his colleagues are filing lawsuits on behalf of the trustee, amounting to more than \$10 billion so far. Some of the actions are “preference” suits seeking to recover payments made to individuals and funds in the 90-day period before the bankruptcy filing, on

the legal principle that “people who got money out right before the bankruptcy shouldn’t get more money than other people when the assets are divided among all the creditors.” They are also suing over fraudulent transfers paid out to third parties.

“This case will be going on for a long time,” Hirschfield says. “We’ve filed a bunch of cases so far, and there are more to come, as we go through each of the fraudulent transfers and potential preferences and see which are appropriate for us to bring suit.”

The work involves some judgment calls, he says: “Some entities will have a hard time paying us back because they were defrauded. A fund may have gotten \$100 million from Madoff last year but has since paid that money out to their investors. One of the challenges is trying to trace the money and find where there are assets remaining.

“One of the heartbreaking aspects of this is the people who invested in the ’70s and ’80s who are now retired and made decisions in their lives based on what they thought they had.

“There are a lot of people who are very angry. A lot of people put all their money into Madoff and now they’re virtually penniless. I was at Madoff’s sentencing hearing and it was extraordinarily sad. There was one person who told the judge that she and her husband took a mortgage on their house and invested the money with Bernie, and now not only is that money gone but they are saddled with that mortgage debt. Another person talked about how she is basically forced to scrounge for food, literally, in dumpsters. It’s very sad.”

The trustee has collected more than \$1.2 billion already, Hirschfield says. He notes that “one of the things that differentiates this case is that our fees are paid by the SIPC. In most bankruptcies, the fees are paid out of the pot first. But everything we collect goes to pay the customers, the creditors.”



Doug Sylvester '94 on a tiny revolution

Douglas J. Sylvester '94 is thinking big – and also small. Really, really small. As a research fellow at Arizona State University, where he teaches IP law and serves as an associate dean, he has immersed himself in the global issues arising from nanotechnology, the emerging science of machines and materials measured in billionths of a meter.

Especially he studies and writes about the human impacts of such microscopic technology, which some say may revolutionize the way we live. One of the problems with revolution, though, is that it makes people nervous.

“Human beings adapt to technologies and deal with the consequences a lot better than lawyers and social scientists would like to believe,” Sylvester says. “Change bothers people. But one of the things the law does really well is to allow technologies to disperse and be accepted by society.”

In his writing, Sylvester explores the psychology of how humans accept or reject new technologies. He also thinks and writes about privacy issues that arise from new technologies, taking issue with those who assert that individual privacy should always trump social concerns. “The concern I have always had about lawyers and law professors,” he says, “is that we look for people who are losers and say everything is about protecting their rights. I tend to think that is wrong. If individuals lose a degree of privacy, there are many beneficial results for society.”