UB Law Forum

Volume 22
Number 1 *Fall 2009*

Article 7

10-1-2009

Doug Sylvester ’94 on A Tiny Revolution

UB Law Forum

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/ub_law_forum

Recommended Citation
UB Law Forum (2009) "Doug Sylvester ’94 on A Tiny Revolution," *UB Law Forum*: Vol. 22 : No. 1 , Article 7.
Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol22/iss1/7

This Article is brought to you for free and open access by the Alumni Publications at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in UB Law Forum by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

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."

• • •

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."