

LANGLER SIFFERT & WOHL LLP

ATTORNEYS AT LAW

33RD FLOOR
500 FIFTH AVENUE
NEW YORK, N. Y. 10110-3398
WWW.LSWLAW.COM

TELEPHONE (212) 921-8399
TELEFAX (212) 764-3701

June 15, 2010

By ECF

The Honorable Stanley R. Chesler
United States District Court for the
District of New Jersey
Frank R. Lautenberg U.S. Post Office
& Courthouse Building
Newark, New Jersey 07101

Re: The Lautenberg Foundation, et al. v. Peter Madoff
Civil Action No. 09-816 (SRC)

Dear Judge Chesler:

As Your Honor is aware, our firm, along with Saiber LLC, represents defendant Peter Madoff in the above-captioned action. We write in reply to the letter submitted to Your Honor on June 11, 2010, by counsel for plaintiffs The Lautenberg Foundation, Joshua Lautenberg, and Ellen Lautenberg (collectively, the "Lautenberg Plaintiffs") regarding the application filed by the Trustee ("Trustee") of Bernard L. Madoff Investment Securities LLC ("BLMIS") for enforcement of the automatic stay and for a preliminary injunction, in which the Trustee seeks, *inter alia*, a declaration that this litigation is void *ab initio*.

In their June 11 letter to Your Honor, the Lautenberg Plaintiffs state that they "intend to vigorously oppose" the Trustee's application in the Bankruptcy Court and "are confident that the Bankruptcy Court will agree that Plaintiffs' Complaint is not subject to the automatic stay or any other extant stay order and that there is no cause to otherwise stay this proceeding." If the Lautenberg Plaintiffs are correct and the Bankruptcy Court rules in their favor after the scheduled August 19 hearing on the preliminary injunction, then the Lautenberg Plaintiffs presumably may proceed with this litigation. If the Bankruptcy Court grants the application, however, this litigation may be declared void *ab initio*. While the merits of the Trustee's application are properly before the Bankruptcy Court, and not this Court, it bears noting that the Bankruptcy Court recently granted a similar application by the Trustee in a Madoff-related adversary proceeding captioned *Picard v. Fox*, Adv. Pro. No. 10-03114 (BRL), 2010 Bankr. LEXIS 1150 (Bankr. S.D.N.Y. May 3, 2010).

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The Lautenberg Plaintiffs' letter suggests that if Defendant believed this action was subject to the automatic stay or any other stay order, Defendant "would have affirmatively acted to enforce any such stay." The Trustee's application, however, is brought before the Bankruptcy Court on behalf of, and for the benefit of, the BLMIS estate and its creditors – not Defendant – and neither Defendant's interest nor his opinion of the legal issues is relevant. In the Trustee's adversary proceeding in the Bankruptcy Court, the Trustee describes this litigation as an attempt by the Lautenberg Plaintiffs, who are general creditors of BLMIS, "to leapfrog over other creditors to obtain a greater share of their claims against BLMIS than they would otherwise receive" (Trustee Memorandum of Law at 36), in violation of the automatic stay imposed by section 362 of the Bankruptcy Code and SIPA, as well as stay orders entered by the United States District Court for the Southern District of New York (the "Stay Orders") (*id.* at 30). In any event, Defendant has in fact consistently argued – including in his brief in support of his motion to dismiss (at pages 9-10), his reply brief in further support of his motion to dismiss (at page 25), and his brief in opposition to the Lautenberg Plaintiffs' summary judgment motion and in support of his motion to stay the litigation (at pages 2, 57) – that the Lautenberg Plaintiffs' action is an improper and unfair attempt to grab assets ahead of the Trustee and other investors.

To avoid any further potential violation of the Stay Orders and the automatic stay, and to avoid undue effort and expense on the part of the parties in a litigation that may be rendered void, as well as to conserve the resources of the Court, we respectfully request that further proceedings in this litigation, including Defendant's time to submit his reply brief on his own cross-motion for a stay before this Court, await the Bankruptcy Court's resolution of the Trustee's application for enforcement of the automatic stay and preliminary injunction, which currently is scheduled to be heard in the Bankruptcy Court on August 19, 2010.

Very truly yours,



Charles T. Spada

cc: Hon. Madeline Cox Arleo
William F. Maderer, Esq.
Michael Griffinger, Esq.