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HEADLINE: WILPON DEFENDS HONOR. Will not make deal that sullies reputation

BYLINE: BY TERI THOMPSON, WAYNE COFFEY and NATHANIEL VINTON DAILY NEWS SPORTS WRITERS

BODY:

TWO-AND-A-HALF YEARS into a financial calamity that has rocked Fred Wilpon's world, cost him hundreds of millions of dollars and forced him to put a piece of his baseball team up for sale, Wilpon is more resolved than ever to protect his good name, according to a highly placed Mets source.

Even as the trustee in the Bernie Madoff bankruptcy case continues to unleash attacks on his character, and that of his partner, Saul Katz, those close to the Mets' owners say the men are more than willing to settle the contentious and costly case, which is being mediated by former Gov. Mario Cuomo, although they are not willing to do so at further expense to their reputations.

"Fred is absolutely willing to go through the mediation process," says one source close to Wilpon. "They have been cooperating with the process but Fred will adamantly oppose any resolution that would involve any suggestion that there was wrongdoing by him or Saul. This is his life's work, his honor."

In what lawyers familiar with the case call a perplexing move, Irving Picard, the court-appointed trustee overseeing the recovery of money for the victims of Madoff's massive Ponzi scheme, released a statement Thursday along with a reply to a motion to dismiss the \$1 billion lawsuit Picard has filed against Wilpon, Katz and their partners in Sterling Equities that accuses the Mets' owners of refusing to return what he calls "stolen money" from other Madoff investors.

"Fred Wilpon, Saul Katz and the Sterling Partners are holding \$300 million in fictitious profits consisting of 'other people's money,' stolen money that they received from Bernard Madoff. Yet they refuse to return this stolen money,"

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said David J. Sheehan, counsel to Picard and a partner at Baker & Hostetler LLP, the counsel for the trustee. "There is no rationale - in law or in fact - that justifies their retention of stolen money."

The stolen money that Picard refers to - \$300 million in what Picard has also termed "fictitious profits", in addition to \$700 million in principal Wilpon and Katz poured into their Madoff accounts over a 25-year period - is exactly the issue Cuomo is attempting to mediate, which raises the question of why Picard would inflame the rhetoric in an already hotly contested case.

"We don't know exactly why they're doing what they're doing," a source familiar with the legal battle said of Picard's claims. "The mediation and the litigation are running on a parallel track. They're both going forward . . . It's unusual to put out a press release in this situation."

The reply brief and press release didn't address the central subject matter of the Mets' owners' dismissal motion, their claim that Picard selectively quoted from a deposition to portray one of the men's business associates as having incriminated Wilpon and Katz when in reality the business associate, Peter Stamos, provided testimony favorable to the men. Picard has refused to share the deposition but Sterling's lawyers obtained it independently and submitted it as evidence that Picard acted in bad faith.

Helen Chaitman, a New York attorney who has 850 Madoff clients who Picard also is attempting to recover profits from, said she doesn't understand the trustee's motives.

"I have no idea what his motivation is, but I think it's despicable," she said.

Chaitman points out that Picard is treating the Mets' owners in a different way than he has other Madoff clients, in particular the four men who Madoff has said were complicit in the Ponzi scheme - Jeffrey Picower, Stanley Chais, Norman Levy and Carl Shapiro - in that he sought only profits from those men. Picower's estate has agreed to give up \$7.2 billion in ill-gotten gains, and Shapiro gave up \$625 million. Levy, who died last year, gave up \$220 million of his earnings from Madoff investments, while the case against Chais is ongoing. None were sued for principal, as the Mets' owners have been, even though Picard does not accuse them of complicity, saying only that they "knew or should have known" of the fraud.

"Norman Levy was a co-conspirator (of Madoff's)," Chaitman said. "Picower was a co-conspirator. And yet Picard only went after their earnings and gave them sweetheart deals. With (the Mets' owners) he is coming after earnings and principal. It's totally irrational. I don't know why he has such a vendetta against people who were not co-conspirators."

In his reply Thursday, Picard claimed to have further evidence that the Wilpons should have known of the Ponzi scheme because, among other reasons, they discussed buying fraud insurance for their investments with a friend who bought such insurance and is now also being sued by Picard in a sealed action.

According to Picard's filing, Charles Klein, a managing director at American Securities, a private equity firm that had a business relationship with Wilpon and Katz, recommended to Katz in 2000-01 that he buy fraud insurance to cover Sterling's Madoff investments, a move that Picard says "establishes incontrovertibly" that Wilpon and Katz were on "notice" of Madoff's "possible fraud."

Those close to Wilpon and Katz, however, paint a different picture, as they do with all the accusations leveled at them, pointing out that the men did not buy the insurance, did not "shop" for it, as Picard says, and that Klein himself dropped his fraud insurance "after a year or two."

David Cohen, general counsel for the Mets, points out that the selective nature of Picard's claims ignores testimony in depositions that contradicts those claims. For example, Cohen says, the men were so convinced in Madoff's trustworthiness that they discussed shifting their investments in another fund, Sterling Stamos, to Madoff shortly before his scheme collapsed.

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"In his deposition, Peter Stamos testified that Saul Katz told him that he was disappointed that the performance of the Stamos fund was not as strong as Madoff's, and that he was inclined to withdraw funds from SSP and reinvest them with Madoff," Cohen said. "They simply thought Madoff was smarter and better. They had zero suspicion."

Cohen echoed the frustration that Fred Wilpon and Saul Katz are dealing with as the case slowly inches forward, even in the face of withering attacks on their integrity, pointing out that the men were putting money into their Madoff accounts, including \$1 million on the day the fraud collapsed, right up until the last moment.

"So you if you think Madoff is running a Ponzi scheme, you react by investing more money right up to the last day, you don't buy insurance and you stay in it to the end?" Cohen said. "It makes no sense."

GRAPHIC: Mets owner Fred Wilpon is willing to make deal to settle lawsuit filed by trustee in Bernie Madoff case, but insists he did nothing wrong. Photo by Reuters

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