

Suit Filed Against Auditor of Investment Fund for Deficient Auditing of Madoff-Managed Assets

By Stephen C. Baker and Timothy J. O'Driscoll

We write today about an action filed by John DeLollis, Tom Holsman, Douglas McCarron and Frank Spencer in their capacity as trustees of the Empire State Carpenters Annuity Fund ("Empire Annuity Fund") and the Empire State Carpenters Pension Fund ("Empire Pension Fund") (collectively, the "Empire Funds") "to recover losses suffered by the . . . [Empire Funds] as the result of Defendant's negligent performance of its professional obligations as the accounting firm that audited the financial statements of the Income-Plus Investment Fund ('Income-Plus'), which had substantial assets invested with and managed by Bernard Madoff and/or Bernard L. Madoff Investment Securities LLC (collectively, 'Madoff')."

Plaintiffs filed their Complaint on or about May 1, 2012 in the Supreme Court of the State of New York, County of Nassau. According to the Complaint, "[a]s Income-Plus's auditor, Defendant was required to perform its work in accordance with Generally Accepted Auditing Standards ('GAAS') to determine whether the financial statements of Income-Plus were prepared in conformity with Generally Accepted Accounting Principles ('GAAP')." The Complaint alleges that, in order to comply with GAAS, the auditor must "plan and perform each audit in a manner that provides reasonable assurance that the financial statements are free of material misstatement, whether caused by error or fraud."

Plaintiffs then allege that "Defendant was negligent in performance of its auditing services and failed to conduct its audits in compliance with GAAS. Defendant issued unqualified audit opinions despite having insufficient information to provide it reasonable assurance that the financial statements were free of material misstatement." The Complaint further alleges that Defendant's audit procedures "were particularly deficient given the substantial concentration of Income-Plus assets held by one manager (Madoff), the fact that Madoff did not hold assets invested by Income-Plus in an independent third-party custodial account, and the absence of any reliable independent audit report of Madoff."

According to the Complaint, "Defendant intended that the participants of Income-Plus, including the Empire Funds . . . would be relying on the audit reports that Defendant

prepared for and provided to them in making decisions regarding their investment holdings in Income-Plus.” The Complaint avers that absent Defendant’s alleged negligent performance of its auditing services, “the Empire Funds would not have maintained investments in Income-Plus or made any new investments of capital in Income-Plus or any other Madoff-related investment.” The Complaint further avers that “Defendant failed to perform its duties with the requisite degree of care and professional competence, by, among other things, failing to act in accordance with professional standards of care including GAAS, failing to exercise professional skepticism, expressing unqualified opinions on financial statements that were not prepared in accordance with GAAP, and negligently expressing unqualified opinions on the statements of changes in capital account of the Empire Funds.”

In the Complaint, Plaintiffs request that the Court “[a]ward damages in an amount to be proven at trial to compensate the Empire Funds for the losses suffered by the Empire Funds as a result of Defendant’s negligence.”

If you are interested in receiving a copy of the Complaint described above, or updates regarding same, please contact Stephen C. Baker or Timothy J. O’Driscoll at Drinker Biddle & Reath LLP.

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