

# Madoff Class, Derivative & Insurance Litigation

Wednesday, December 2, 2009

Location: Conference Center, 780 Third Avenue, New York

## CONFERENCE CHAIRS:

Richard J. Bortnick, Esq., Cozen O'Connor, West Conshohocken, PA

Kevin M. Mattessich, Esq., Cozen O'Connor, New York

James Murray, Esq., Dickstein Shapiro LLP, Washington, DC



9:30 Registration and Continental Breakfast

10:00 Financial Institutions and Crime Policies

*Who is being sued? Who might be sued?*

- “Feeder Funds” and “Funds of Funds”
- Accountants
- Investment Advisors
- Lawyers who advised, reviewed/certified prospectuses or did transactional work for Ponzi funds, feeder funds, or investment advisors
- The SEC
- Early paid investors

Michael Miller, Esq., Steptoe & Johnson LLP, New York  
Daniel Horwitz, Esq., Dickstein Shapiro LLP, New York

11:00 Morning Break

11:15 Ponzi Schemes – Causes of Action and Claims Alleged, Including

- Securities fraud
- Common law fraud
- Fraudulent/negligent misrepresentations
- Racketeering
- Conversion and unjust enrichment
- Breach of fiduciary/trustee duties
- Investment Company and Investment Advisor Act violations
- Negligence/gross negligence
- Preference payment claims under bankruptcy laws

Brad Friedman, Esq., Milberg LLP, New York  
Robert Wallner, Esq., Milberg LLP, New York

12:15 Luncheon Keynote Address

Ira Sorkin, Esq., Dickstein Shapiro LLP, New York

1:15 Financial Institutions/Fidelity

- Fidelity bonds
- ‘Discovery’ bond
- ‘Loss sustained and discovered’ form
- Who is a “covered” employee?
- Direct loss
- Alter Ego: acts committed by you or your partners
- Trading losses

Kevin Mattessich, Esq., Cozen O'Connor, New York  
John Heintz, Esq., Kelley Drye & Warren LLP, Washington, DC

2:15 Afternoon Break

2:30 E&O and D&O

- Who is an insured, and what is a claim?
- What is a ‘wrongful act’?
- What are ‘professional services’?
- What constitutes a loss?
- Potential exclusions, including fraud and profiteering
- Rescission issues
- Other insurance clause and priority of payments clause
- Side-A coverage issues
- Exhaustion in excess policies
- Application representation/warranties
- Rescission issues

James Murray, Esq., Dickstein Shapiro LLP, Washington, DC  
Richard Bortnick, Esq., Cozen O'Connor, West Conshohocken, PA  
Greg Flood, President, IronPro, New York

3:30 Other Potential Insurance Sources

- Homeowners/Umbrella coverage
- SIPC excess insurance
- General liability
- Pension/fiduciary wrongful acts
- Inter-related wrongful acts and related claims
- Exclusions

Selena Linde, Esq., Dickstein Shapiro LLP, Washington, DC  
Gregg Rentko, CPCU, AU, Vice President, ACE Professional Risk, New York

4:15 Adjourn

## About the Chairs

**Richard Bortnick** is a Member resident in the firm’s West Conshohocken office of Cozen O’Connor, where he practices with the Global Insurance Group. Mr. Bortnick litigates directors’ and officers’ liability, securities fraud, professional liability, cyber and technology risks, insurance coverage, products liability, employment practices, and commercial litigation cases. Prior to joining Cozen O’Connor, Mr. Bortnick was a partner at White and Williams LLP, where he served as a member of the firm’s Executive Committee. He currently serves as a member of the Executive Corporate Committee of the Franklin Institute science museum. Mr. Bortnick received his bachelor of science degree summa cum laude from Boston University (1981) and his law degree cum laude from the Villanova University School of Law (1985). He is licensed to practice in Pennsylvania and New Jersey and is admitted in the U.S. District Courts for the Eastern District of Pennsylvania, the District of New Jersey, and the Western District of Michigan, as well as the U.S. Courts of Appeal for the Third and Eleventh Circuits. Richard is AV-rated by Martindale-Hubbel.

**Kevin Mattessich** joined the New York office of Cozen O’Connor in October 2000 and practices with the Global Insurance Group. He focuses his practice on insurance law and commercial litigation. Prior to joining Cozen O’Connor, Mr. Mattessich was the managing partner of the New York office of an international firm. In addition, he served as a federal prosecutor with the U.S. Department of Justice in Washington, D.C., and as a member of the Fraud Section of the Criminal Division in a special unit investigating healthcare and insurance fraud. His experience includes matters involving insider trading, money laundering, foreign corporation bribes, derivatives trading, securities offerings, telecommunications fraud and insurance fraud within multi-national financial institutions, brokerage houses and other corporations. Mr. Mattessich has assisted insurers in establishing insurance programs and in underwriting specialized risks, and has also drafted financial institution and commercial bonds and liability policies relating to professional services, directors and officers, trustees and fiduciaries, employment practices, kidnap and ransom, fidelity and electronic risks. He has advised both cedents and reinsurers with respect to the administration of treaty and facultative risks, including programs involving complex financial institution claims. Mr. Mattessich received his bachelor of arts cum laude from Boston College (1982) and his law degree from Catholic University of America Law School (1985). He is admitted to practice in New York and in New Jersey.

**Jim Murray** is a partner in Dickstein Shapiro’s Insurance Coverage Practice. He is a trial lawyer with 25 years of experience in insurance coverage matters on behalf of policyholders, including disputes involving underlying environmental and asbestos liability, first-party property policies, aviation coverages, clergy abuse claims, mortgage insurance, directors and officers lines, and all manner of London market issues. In the past year, Mr. Murray served as lead counsel for the FDIC, as conservator for IndyMac Federal Bank, F.S.B., in two mortgage insurance lawsuits in federal court in California. Earlier this year, Mr. Murray was appointed by the federal bankruptcy court in Portland, Oregon as special insurance coverage counsel to the Oregon Province of Jesuits relating to liabilities for underlying allegations of clergy abuse. He was also selected this year as coverage counsel in a case involving the largest coal ash slide in history, and he is currently serving as trial counsel in several complex coverage lawsuits relating to very substantial underlying asbestos liabilities. He currently serves as head of the Firm’s Insurance Initiatives on insurance coverage for subprime and cybersecurity liabilities. Mr. Murray’s trial experience ranges from environmental contribution cases to bank fraud, trademark infringement, and professional liability.