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June 21, 2010

VIA ECF & REGULAR MAIL

The Honorable Stanley R. Chesler, U.S.D.J.
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101-0999

Re: The Lautenberg Foundation v. Madoff
Civil Action No.: 09-00816 (SRC)(MCA)

Dear Judge Chesler:

This Firm represents Plaintiffs The Lautenberg Foundation, Joshua Lautenberg and Ellen Lautenberg (collectively, "Plaintiffs") in the above-referenced matter, and we write in response to the correspondence from Defendant's counsel dated June 15, 2010.

From the inception of these proceedings, Defendant has had one goal -- delay. First, Defendant moved to dismiss, which the Court in large part denied. Then, Defendant sought to delay discovery. Defendant initially refused to be deposed and was only deposed after Magistrate Judge Arleo ordered that he appear for his deposition. And, although he did ultimately appear for his deposition, he invoked the Fifth Amendment more than 250 times and essentially refused to answer a single question. More recently, in addition to opposing Plaintiffs' Motion for Summary Judgment, Defendant filed a cross-motion to stay this litigation, which remains pending.

Now, Defendant attempts to latch onto the adversary proceeding that has been filed by the SIPC Trustee in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") to further delay resolution of these proceedings. While we will not burden this Court with our legal response to the Trustee's application, our research has demonstrated that the Trustee's arguments are tenuous at best, and we believe that we will be able to convince the Bankruptcy Court that there is no basis to stay these proceedings. Contrary to Mr. Spada's comment in his recent letter to the Court, our claims in this litigation are very different from the ones in the Fox litigation that were found by the Bankruptcy Court to violate the automatic stay. See Fox v. Picard, 2010 Bankr. LEXIS 1150 (Bankr. S.D.N.Y. May 3, 2010). The Fox plaintiffs were seeking to pursue essentially fraudulent conveyance claims that inured to the benefit of the Trustee and the estate. In contrast, as this Court is aware, the Plaintiffs here are seeking to assert direct claims against Peter Madoff, who is not the debtor and undoubtedly has assets that are not the property of the estate.

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Mr. Spada's recent correspondences to the Court are nothing more than end-run around receiving a ruling on Defendant's current stay motion. The Plaintiffs should not be penalized because, unlike the Trustee and the other investors of BMIS, they have promptly and vigorously advanced their direct claims against the Defendant. The Court need not wait until the Bankruptcy Court gets around to ruling on the Trustee's application, which is not even returnable until the end of August.

Finally, the current request to stay these proceedings pending a ruling by the Bankruptcy Court is devoid of the necessary elements that must be shown to obtain a stay. Aside from other elements, a temporary stay would require a showing of irreparable harm. Until this Court grants Plaintiffs' motion for summary judgment and Plaintiffs then seek to execute on that judgment, neither the Trustee nor the Defendant could make such a showing. Consequently, as set forth in our June 11, 2010 correspondence, Plaintiffs respectfully request that the Court deny Defendant's most recent attempt to delay these proceedings. There is no basis or need for this Court to delay resolution of the fully briefed pending motion for summary judgment. (With respect to Defendant's reference to the submission of a reply brief on his cross-motion, we note that the Local Rules do not permit the filing of such a brief absent leave from the Court. See L. Civ. R. 7.1(d)(3).)

Thank you for your consideration.

Respectfully submitted,

s/ Michael R. Griffinger

Michael R. Griffinger

MRG:ad

cc: Honorable Madeline Cox Arleo, U.S.M.J. (Via ECF & Regular Mail)
Charles T. Spada, Esq. (Via ECF & Regular Mail)
William F. Maderer, Esq. (Via ECF & Regular Mail)