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MAY 28, 2012, 9:42 PM

Madoff Case Is Paying Off for Trustee (\$850 an Hour)

By [ANDREW ROSS SORKIN](#)

Ruth Fremson/The New York Times Irving Picard's efforts to recover funds for the victims of Bernard Madoff's giant Ponzi scheme have generated \$554 million in legal and other fees.

[Irving H. Picard](#), the court-appointed trustee seeking to recover funds for the victims of [Bernard L. Madoff's](#) multibillion-dollar [Ponzi scheme](#), has been described as a modern-day Robin Hood. For nearly four years, he has been working to pay back those who were swindled by Mr. Madoff, some who lost their entire life savings.

Yet a look at recent court filings shows Mr. Picard has had much more success collecting money for himself and a dozen law firms and consultants than any victim of Mr. Madoff's crime.

So far, Mr. Picard's efforts have created a whopping \$554 million in legal and other fees. How much have Mr. Madoff's victims actually received from all of the cases and motions he's made? Only \$330 million. And how much does Mr. Picard estimate the fee spigot will pour out by 2014? A mere \$1 billion.

At \$850 an hour, Mr. Picard and his law firm, Baker & Hostetler, are starting to look more like the princes of the Full Employment Act for Lawyers than storybook heroes.

In the last several years, Mr. Picard has brought more than 1,000 cases seeking more than \$100 billion on behalf of victims, despite acknowledging that only about \$17.3 billion had actually been invested by customers. (The entire Ponzi scheme has been estimated to be worth \$65 billion, but much of that is the result of made-up profits recorded by Mr. Madoff.)

Mr. Picard's admirers cheered him on as he accused banks and other financial firms of aiding and abetting Mr. Madoff or willfully turning a blind eye to evidence that he was operating a fraud. Yet look what happened to many of those cases: judges tossed out a vast majority of the claims — some \$90 billion worth.

Judge [Jed S. Rakoff](#) of United States District Court in Manhattan threw out Mr. Picard's \$60 billion racketeering suit against UniCredit in February, describing some of the claims in the case as "paltry, and otherwise unexceptional." In another ruling, Judge Rakoff rejected a case against [HSBC](#), calling it "convoluted." He said he was "mystified" by some of Mr. Picard's arguments.

Another district court judge, Colleen McMahon, decided against Mr. Picard's most aggressive claims in a \$20 billion case brought against **JPMorgan Chase**, saying plainly: "The trustee's theories fail."

According to a **Government Accountability Office** report quoting the Securities Investor Protection Corporation, which hired Mr. Picard as the bankruptcy trustee, it is unlikely he will be able to pay back Mr. Madoff's customers the \$17.3 billion that he had said was his goal, let alone the \$100 billion he originally sought. Indeed, at the rate he's going, he would be lucky to return more than half of the \$17.3 billion.

A spokeswoman for Mr. Picard did not make him available for an interview.

In fairness to Mr. Picard, he has been successful in seeking to claw back money from "net winners" — investors who walked away with more money than they started with — so he can pay the "net losers." Among the net winners with whom he has reached settlements is the Wilpon family, which controls the New York Mets.

Thus far, he has reached settlement deals worth some \$9 billion. He has delivered only \$330 million to Mr. Madoff's victims, however, because so many of those settlements are being challenged in court. It is unclear whether some of the settlements, which have been approved by a bankruptcy judge but are being challenged by others on appeal, will hold up. In a statement on the trustee's Web site, Mr. Picard said he was "confident that the appeals on these settlements will fail, as they already have on several occasions."

Meanwhile, the legal fees keep piling up. Although the fees have been approved by the bankruptcy court, Judge Rakoff and others have raised questions about the growing payday.

In a particularly caustic exchange in court last year, Judge Rakoff, upon seeing a group of lawyers enter the courtroom on behalf of the trustee, said: "Can I ask a question, which is, since the trustee's fees come out of the funds that otherwise would be available for other purposes, why are there four attorneys from the trustee here in court today?"

When the lead lawyer responded that he might need to consult with his colleagues during his argument, Judge Rakoff shot back sarcastically: "If it turns out you give your argument without needing to consult with them, of course, you and your firm won't charge for their appearance today."

The lawyer replied: "I, your Honor, am not going to make any promises."

Helen Davis Chaitman, a lawyer with Becker & Poliakoff who has been fighting Mr. Picard on behalf of some net winners of Mr. Madoff's crime, famously told *The New York Daily News*: "Picard is going to wind up being richer than Madoff."

That may be hyperbole — Mr. Picard has personally taken home only \$5.1 million, according to court documents — but the total fee numbers are staggering.

There is good news, at least sort of: the fees do not come out of the hide of the Mr. Madoff's victims. They are paid from a fund overseen by SIPC, which provides a form of protection for investors against losses that arise when a broker-dealer fails. The nonprofit group is supported by charges paid by its broker-dealer members, but the cost of those charges is most likely passed on to customers.

“Not one penny of recovered customer money is used to pay any of the legal fees and expenses incurred by the SIPA trustee,” according to the trustee, who was referring to the Securities Investor Protection Act that mandated the SIPC system.

A spokeswoman for Mr. Picard defended his work and his fees saying: “Given the extraordinarily complex factual and legal issues confronting the SIPA trustee, his success is unmatched by any other fiduciary. That success emanates from the fact that — notwithstanding the relentless attacks by some of the world's leading law firms supported without reservation by their deep-pocket clients — the necessary resources have been provided to the SIPA trustee via SIPC from its securities industry fund, thus allowing him to recover over \$7 million a day for the victims since he was appointed SIPA trustee in December of 2008.”

That \$7 million a day figure, by the way, assumes that every dollar he collected will be paid out to Mr. Madoff's victims, which is unlikely.

Nobody is asking Mr. Picard or his legal team to do all this work pro bono. But given the amount of money at stake and the epic size of the crime, one would hope that he would have pursued a more effective legal strategy that would have made a lot more money for the victims than the lawyers.