NEWS RELEASES

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Husch Blackwell Secures Appellate Win in Dispute over Ponzi Recoveries

THE FOURTH CIRCUIT UPHELD THE RECEIVER'S PLAN TO DISTRIBUTE FUNDS TO INVESTORS DEFRAUDED IN A $550 MILLION PONZI SCHEME.

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Husch Blackwell prevailed in the U.S. Court of Appeals for the Fourth Circuit on behalf of Gregory S. Milligan, the court-appointed receiver, in a dispute with two investor groups who challenged how the receiver's distribution plan allocated recovered funds among claimants.

The distribution plan came on the heels of one of the largest securities fraud recovery projects in U.S. history following the successful prosecution of defendants Kevin B. Merrill, Jay B. Ledford, and Cameron R. Jezierski by the U.S. government. From 2013 to 2018, Merrill, his co-conspirators, and their affiliated entities took in more than $394 million from more than 230 individual investors to purportedly purchase consumer debt portfolios. They returned some $248 million to investors, churning the monies in Ponzi-like fashion while claiming the returns were the result of debt portfolio collections and sales. The majority of investors—at least 160—lost 50 percent or more of their principal investment with 74 investors losing 100 percent of their investment.

The recovery of the stolen money began in earnest in September 2018, when Milligan, Executive Vice President with Harney Partners, was appointed receiver by the U.S. District Court at the request of the Securities and Exchange Commission. Milligan tapped Husch Blackwell's Insolvency & Commercial Bankruptcy team to assist in the recovery operation.

"Too often, in a Ponzi situation there is little or nothing to recover for the benefit of defrauded parties. The money is simply gone," said Milligan.

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“Fortunately for the victims here, the perpetrators were fond of luxury goods—including 11 real estate assets located across the country, 34 vehicles, and an interest in an aircraft, as well as millions of dollars of fine art, watches, and other jewelry—that formed the basis of a massive recovery operation. The varied skill sets—including investigative, forensics, transactional and litigation—and the deep pool of resources brought to bear by Husch Blackwell were integral to the recovery and made for a very smooth, efficient process.”

In support of the recovery, the Husch Blackwell team, led by partners Lynn Butler, Buffey Klein, and Jameson Watts, organized and operated the claims process involving nearly 300 claims, handled the legal complexities of marketing and liquidating the receivership estate’s assets, pursued litigation against third parties, and developed the distribution plan for the recovered assets.

That plan was approved by the district court in November 2022, prompting lawsuits from two investor groups who objected to the plan’s distribution methodology. Milligan then turned to the Husch Blackwell team to handle the resulting litigation. The district court overruled plaintiff objections, and the plaintiffs appealed to the Fourth Circuit, which consolidated the appeals and then affirmed the lower court’s decision.

“This matter allowed our firm to really flex its muscles due to the breadth and depth of skill required to pursue such a large recovery across multiple asset classes, dealing with numerous corporate entities, and then litigating the resulting plan,” said Butler. “This was the largest such recovery we have handled, and I couldn’t be prouder of the way our team responded across all areas of practice, including bankruptcy, litigation and corporate, with a special shout-out to appellate specialist Danny Solomon for his work on the briefing and handling of the oral argument. Ultimately, we are pleased that all of this work yielded a significant recovery for the victims.”

By some accounts, the investment fraud perpetrated by Merrill and his co-conspirators places among the largest 20 such schemes in U.S. history. Recovery estimates vary, but a typical recovery in the Ponzi setting rarely exceeds 30 percent. The Husch Blackwell-led process has allowed Milligan in his role as receiver to return nearly 50 percent of the victims’ invested capital.

The Husch Blackwell team, led by Butler, Klein, and Watts, included Ryan Burgett, Lauren Hayes, Danny Solomon, Dieter Juedes, and Brian Waagner.

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