
Hughes Hubbard & Reed

HHR Wins Second Dismissal of Madoff Lawsuit Against Ernst & Young

News & Events

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Hughes Hubbard secured its second dismissal of a Madoff-related lawsuit against Ernst & Young Cayman Islands ("EY Cayman"), which acted as auditor to two foreign investment funds that invested and lost billions of dollars with Bernard Madoff Investment Securities ("BMIS").

The investment funds Herald and Primeo, both managed offshore, lost all of their assets Dec. 11, 2008, when Madoff's sons revealed his Ponzi scheme.

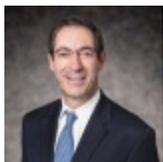
Plaintiffs, purporting to represent a class of foreign investors in the Herald and Primeo funds, filed separate lawsuits in the Southern District of New York against Ernst & Young, the funds' administrators and investment manager, and others. The lawsuits, ultimately consolidated, sought over \$2 billion in damages.

The firm moved to dismiss all the suits, arguing as one of several grounds for dismissal that, under the doctrine of *forum non conveniens*, the case should be brought in Luxembourg. Briefing completed on Oct. 28, and only one month later, on Nov. 29, U.S. District Judge Richard Berman dismissed the action in favor of the more convenient and "unequivocally adequate" forum of Luxembourg and denied all proposed amendments as futile.

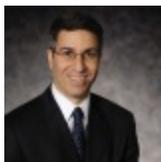
In his reasoning, Berman found that the foreign plaintiffs' choice of a New York forum was entitled to "very limited deference," and that Madoff's notoriety, along with tactical advantages of local procedures such as class actions, raised a "strong inference that forum shopping motivated foreign plaintiffs' decision to sue in the United States."

Bill Maguire, Marc Weinstein, Gabrielle Marshall and Kate Vogel represented EY Cayman.

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