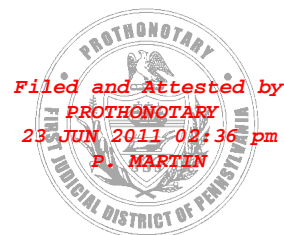


IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA



SARAH AND DANIEL J. KEATING III, :

*Plaintiffs,* :

v. :

DUANE MORRIS LLP, :  
STANLEY M. JOFFE, ESQ., and :  
STANLEY A. BARG, ESQ., :

*Defendants.* :

Court Term: May, 2011

Civil Action No.003899

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**AVISO DE DEFENDER**

Le han demandado en corte. Si usted desea defender contra las demandas dispuestas en las páginas siguientes, usted debe tomar la acción en el plazo de veinte (20) días después de esta queja y el aviso es servido, incorporando un aspecto escrito personalmente o por un abogado y archivando en escribir con la corte sus defensas u objeciones a las demandas dispuestas contra usted. Le advierten que que si usted no puede hacer así pues, el caso puede proceder sin usted y un juicio se puede incorporar contra usted por la corte sin aviso adicional para cualquier dinero demandado para cualquier otra demanda o relevación pedida por el demandante. Usted puede perder el dinero o la característica u otra endereza importante a usted.

YOU SHOULD TAKE THIS PAPER  
TO YOUR LAWYER AT ONCE.  
IF YOU DO NOT HAVE A LAWYER  
OR CANNOT AFFORD ONE, GO TO  
OR TELEPHONE THE OFFICE SET  
FORTH BELOW TO FIND OUT  
WHERE YOU CAN GET LEGAL HELP.

LLEVE EST DEMANDA A UN  
ABOGADO IMMEDIAMENTE.  
SI NO TIENE ABOGADO O SI NO  
TEINE EL DINERO SUFICIENTE DE  
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**IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA**

**SARAH AND DANIEL J. KEATING III** :  
*Plaintiffs,* :

v. :

**DUANE MORRIS LLP** :  
30 South 17th Street :  
Philadelphia, Pennsylvania :

**STANLEY M. JOFFE, ESQ.** :  
2 Tower Bridge, 1 Fayette St., Suite 225 :  
Conshohocken, Pennsylvania, :

*and* :

**STANLEY A. BARG, ESQ.** :  
30 South 17<sup>th</sup> Street :  
Philadelphia, Pennsylvania, :  
*Defendants.* :

Court Term: May, 2011

Civil Action No.003899

**COMPLAINT — CIVIL ACTION**

Plaintiffs Sarah and Daniel J. Keating III, by and through their undersigned attorneys,  
hereby file this Complaint against Defendants and aver in support thereof as follows:

**PARTIES**

1. Plaintiffs Sarah and Daniel J. Keating III (“Plaintiffs”) are husband and wife and  
currently reside at 1515 Lafayette Rd., Gladwyne, Pennsylvania.

2. Defendant Duane Morris LLP (“Duane Morris”) is a law firm organized as a limited liability partnership with its principal office located at 30 South 17th Street, Philadelphia, Pennsylvania.

3. Defendant Stanley A. Barg, Esquire (“Barg”) is an attorney and Member/Partner at Defendant Duane Morris duly licensed in the Commonwealth of Pennsylvania who maintains his principal office at 30 South 17<sup>th</sup> Street, Philadelphia, Pennsylvania.

4. Defendant Stanley M. Joffe, Esquire (“Joffe”) is an attorney duly licensed in the Commonwealth of Pennsylvania who maintains his principal office at 2 Tower Bridge, 1 Fayette St., Suite 225, Conshohocken, Pennsylvania.

5. Defendant Joffe was a former Member/Partner at Defendant Duane Morris, in its Philadelphia, Pennsylvania office from 2002 to 2007. Thereafter, Defendant Joffe became counsel to the firm until 2008 when he was discharged for significant performance issues.

#### **JURISDICTION AND VENUE**

6. Jurisdiction is proper in this Court pursuant to 42 Pa. C.S. § 5301(a) because Defendants are citizens of the Commonwealth of Pennsylvania and/or a corporate entity that carries on continuous and systematic contacts within the Commonwealth of Pennsylvania.

7. Venue is proper in this Judicial District as to all Defendants under Pa. R. Civ. P. 1006(a), (c) and 2179, as this is the County in which a transaction or occurrence took place out of which the cause of action against Defendants arose, in that (i) Philadelphia County is the county in which the parties executed their contracts and (ii) Philadelphia County is the county in which the parties’ contracts were breached.

## STATEMENT OF FACTS

8. The Plaintiffs hereby assert professional liability and breach of contract claims against the Defendants.

### Engagement of Duane Morris

9. In 2004 Plaintiffs began looking into various asset protection and investment options to provide financial security due to various then-present concerns.

10. Plaintiffs informed Defendant Joffe, known to Plaintiffs as, and confirmed by Defendant Joffe as, the “King of Asset Protection,” that they were interested in highly conservative asset preservation strategies to ensure financial stability for the benefit of their six children.

11. Being risk-averse generally, and especially in the time-frame of the relationship, Plaintiffs stressed to Joffe and Barg that their investment philosophy was 100% asset preservation.

12. Plaintiffs engaged Defendant Duane Morris as their international estate planning legal counsel.

13. Duane Morris claimed to be a full-service law firm that included an international estate planning practice.

14. Defendants Joffe and, thereafter, in combination with Joffe, Barg, acted as Plaintiffs’ attorneys at all times relevant to the allegations in this Complaint.

### Establishment of the Stony Lane Trust

15. On or about January 17, 2005, Defendants established for the Plaintiffs the Lafayette foreign asset protection trust (the “Lafayette Trust”).

16. The Lafayette Trust had a conservative investment strategy, which was composed of 53% cash and 47% fixed income investments.

17. This investment strategy followed Plaintiffs' highly conservative asset preservation investment goals.

18. The Lafayette Trust named SwissIndependent Trustees SA ("SIT") as the Trustee, and named Ampersand Management S.A. ("AM") as the Protector.

19. Pictet & Cie ("Pictet") functioned as both the investment manager and custodian of the Lafayette Trust.

20. In 2007, Defendants compelled Plaintiffs to establish a separate trust structure using the cash position of the Lafayette Trust.

21. Defendant Joffe instructed SIT to open two additional accounts with Pictet as the custodian, one to be managed by Pictet, and the other to be managed by a different investment manager.

22. Defendant Joffe claimed that having two separate investment managers for the new trust structure would further diversify the trust.

23. Having previously conducted business with Notz Stucki & Cie ("Notz Stucki"), Defendant Joffe advised Plaintiffs to use Notz Stucki as the second investment manager of the trust.

24. Defendants strongly proposed that Plaintiffs invest a significant portion of their assets in equity investments.

25. However, Plaintiffs were not interested in placing their assets into unsafe equities and repeatedly stressed the importance of protecting and preserving their assets.

26. Thereafter, Defendants recommended a Notz Stucki model investment portfolio to Plaintiffs, which they stated allocated most assets into fixed income investments and a relatively insignificant portion into ultra-conservative equity and alternative investments.

27. Defendant Joffe provided Plaintiffs with the investment performance of the model investment portfolio and assured them of its consistent performance and that it would satisfy Plaintiffs' stated objective to protect and preserve their assets.

28. In the foregoing context, Plaintiffs accepted Defendants' proposed model investment portfolio.

29. On or about January 8, 2008, based on the representations and advice of Defendants, Plaintiffs authorized Defendants to establish the Stony Lane foreign asset protection trust (the "Stony Lane Trust") with the proposed model investment portfolio.

30. The Stony Lane Trust named SIT as the Trustee, and named AM as the Protector.

31. Thereafter, relying on Defendants' representations and advice, Plaintiffs authorized transfer of the multi-million dollar cash position of the Lafayette Trust to Pictet as the custodian, to be managed by two investment managers, one by Pictet and the second by Notz Stucki.

32. Plaintiffs were under the expectation and belief induced by Defendants that Notz Stucki would be instructed to allocate their assets into fixed income investments with a relatively insignificant portion into ultra-conservative equity and alternative investments, consistent with the model investment portfolio proposed by Defendants.

**Defendant Duane Morris was Aware of Defendant Joffe's Inability to Provide Competent Representation to His Clients including Plaintiffs**

33. Throughout the time relevant to this action, Defendant Joffe was frequently away from his practice due to growing health issues for which he was prescribed drugs, including methadone, and required in-patient hospitalization.

34. Duane Morris assured Plaintiffs, inaccurately or falsely, that Joffe was nevertheless fully competent and capable of performing his duties and that the firm was also fully supervising Joffe's professional activities including Joffe's professional relationship with Plaintiffs.

35. In or about the Spring of 2008, to Plaintiffs' surprise, Defendant Barg, another attorney at Defendant Duane Morris who had handled ancillary tax matters related to Plaintiffs' trusts and who participated in meetings between Joffe and the Plaintiffs and therefore knew, or should have known, of Plaintiffs' interest in preserving their assets, started taking Plaintiffs' phone calls and e-mails to Joffe concerning the Stony Lane Trust.

36. Indeed, during this time Plaintiffs later learned (at first concealed by Defendants and not discovered by Plaintiffs until in or about the latter part of 2009), that representatives of that part of Plaintiffs' investments to be allocated to Notz Stucki made repeated inquiries of Defendants Barg and Duane Morris for information concerning Plaintiffs' investment profile. Barg and Duane Morris, who knew or should have known of Plaintiffs' ultra-conservative profile and desire for asset protection and preservation, failed to provide that information.

37. If Barg and Duane Morris had any reason for ignoring requests for information regarding the investment mandate, they should have inquired of Joffe or Plaintiffs. Nevertheless, Barg and Duane Morris failed to make, or if they did, they ignored the response to, any such

inquiry of Joffe or of Plaintiffs regarding Plaintiffs' explicit and repeated instructions on asset preservation.

38. Defendant Duane Morris was aware of Defendant Joffe's substantial personal performance issues due to, *inter alia*, numerous client and internal complaints of Defendant Joffe's unresponsiveness to client and firm matters, his inattentiveness at client and firm meetings, his failures to provide information to clients or other attorneys at Duane Morris, his communication issues with staff and billing disputes with clients, his combative and/or abusive conduct directed to clients and staff, his appearance of being dazed and confused while rendering services, his loss of concentration and focus, and the existence of health issues resulting in Joffe's prolonged absence from his practice.

39. On numerous occasions, Defendants Joffe and Barg were unresponsive to emails dealing with Plaintiffs' trust matters.

40. Despite Defendant Duane Morris' and Barg's knowledge of Defendant Joffe's unresponsiveness and substandard performance, they failed to inform Plaintiffs of the full extent of Joffe's incompetency, concealed that incompetency, failed to inform themselves of the extent of the goals of representing Plaintiffs, and failed to correct or properly address the situation by allowing Joffe to continue handling Plaintiffs' estate matters that were beyond his hidden incompetency.

#### **Defendants Failed to Follow Plaintiffs' Investment Instructions**

41. Contrary to Defendant Joffe's representations to Plaintiffs, Joffe, and thereafter Barg, did not instruct Notz Stucki to follow the ultra-conservative model investment portfolio recommended by Defendant Joffe and directed to be implemented by Plaintiffs.

42. In fact, Defendant Joffe's eventual instructions to Notz Stucki deviated significantly from the model investment portfolio he recommended to Plaintiffs. This resulted in an astounding almost 50% investment of the assets of Plaintiffs into risky equity and hedge fund investments instead of a relatively insignificant portion into ultra-conservative equity and alternative investments set forth in the recommended model.

43. A week after Notz Stucki received Defendant Joffe's unauthorized instructions regarding Plaintiffs' investment, it notified Defendants that it was no longer interested in handling the investment due to tax issues.

44. Consistent with his continuing display of unresponsiveness to client matters, three months went by until Defendant Joffe responded to Notz Stucki's refusal to manage Plaintiffs' investment.

45. No other attorney from Defendant Duane Morris, including Barg who could have or should have, properly attended to Plaintiffs' interests or attended to Plaintiffs' matters.

46. Despite Defendants Duane Morris having actual notice of Defendant Joffe's lack of competency and having an affirmative duty to manage its attorneys and notify clients of such performance issues, Defendant Duane Morris nevertheless failed to properly manage Defendant Joffe and, thereafter, Defendant Barg.

47. Defendants Duane Morris and Barg failed to notify Plaintiffs of Defendant Joffe's sub-standard performance and also failed to provide additional supervision over Plaintiffs' estate planning matters.

48. When Defendant Joffe finally responded to Notz Stucki, three months later, he failed to address Notz Stucki's tax concerns and instead demanded that Notz Stucki immediately manage Plaintiffs' funds.

49. Had they been properly supervising Defendant Joffe and, thereafter, Defendant Barg, Defendant Duane Morris would have been capable of identifying these attorneys' lack of competence regarding Plaintiffs' representation, and their overall non-responsiveness to the interests and affairs of Plaintiffs.

#### **Duane Morris Discharged Defendant Joffe Due to His Incompetence**

50. On or about June 27, 2008, Duane Morris discharged Defendant Joffe due to, *inter alia*, numerous client and internal complaints concerning Defendant Joffe's unresponsiveness to client and firm matters, his inattentiveness at client and firm meetings, his failures to provide information to clients or other attorneys of Duane Morris, his communication difficulties with staff and billing disputes with clients, his combative and/or abusive conduct directed to clients and staff, his dazed and confused manner while rendering services, and his general loss of concentration and focus with respect to his professional responsibilities and obligations.

51. Although Defendant Duane Morris had knowledge of Defendant Joffe's substandard performance years in advance of the issues complained of by Plaintiffs' herein, and had an obligation to inform Plaintiffs of same, Defendant Duane Morris failed to manage the situation relating to Plaintiffs as was required.

52. Instead, Defendant Duane Morris failed to notify Plaintiffs of Defendant Joffe's termination, and abruptly discontinued Defendant Joffe's cell phone and email services.

#### **Plaintiffs Suffered Substantial Losses**

53. Shortly after December 20, 2008, Plaintiffs were advised by Notz Stucki that their monies were invested in funds that were actually feeder funds of Bernard L. Madoff Investment

Securities LLC. Exhibit A, attached hereto and made a part hereof, is a true and correct copy of the Notz Stucki notice.

54. Despite Defendants' representations of allocating most of Plaintiffs' assets into fixed income investments with a relatively insignificant portion into ultra-conservative equity and alternative investments, in actuality, they allocated almost one-half of the assets into unauthorized, risky, equity and hedge fund investments.

55. Plaintiffs had already compromised their investment strategy by following Defendant Joffe's purported ultra-conservative investment recommendations, but placing almost one-half of Plaintiffs' assets into unauthorized, risky equity and hedge fund investments was wholly inconsistent with Plaintiffs' ultra-conservative investment plan.

56. Even worse, Defendants placed and maintained Plaintiffs' assets in the riskiest investments available, feeder funds for the ponzi scheme architect Bernard Madoff.

57. As a proximate effect of Defendants' actions, Defendants caused Plaintiffs to become victims of Bernard Madoff's massive ponzi scheme and of other improper risky equities, which lead to substantial losses with Notz Stucki when in fact these investments were supposed to be in a conservative asset protection trust.

58. Defendants' failure to properly instruct or monitor Notz Stucki, and failure to follow Plaintiffs' investment directions, caused Plaintiffs to lose a substantial portion of their investment.

#### **COUNT I – LEGAL MALPRACTICE**

59. Plaintiffs hereby incorporate all previous paragraphs as if fully set forth herein.

60. As detailed above, Defendants entered into an agreement with Plaintiffs to render legal services in setting up foreign asset protection trusts, which created an attorney-client relationship.

61. Defendants represented that they were competent and skilled in international estate planning matters, and they had a duty to perform professional services for Plaintiffs with the reasonable care, skill and diligence possessed by an attorney and law firm, having a focused practice on international estate planning.

62. At all relevant times hereto, Defendants acted in a fiduciary relationship to Plaintiffs as their attorneys.

63. At all times relevant hereto, the Defendants acted jointly and severally; and Defendant Duane Morris, acted through its agents and employees.

64. By their aforesaid conduct, Defendants violated the duties owed to Plaintiffs and failed to exercise ordinary skill, knowledge, care, and competence possessed by attorneys in the community by, among other actions:

- a. misleading Plaintiffs into thinking that most of their investment with Notz Stucki was placed into fixed assets i.e. bonds and similar secured instruments;
- b. misleading Plaintiffs by informing them that their investments were going to be placed in safe, ultra-conservative investments and would not be speculative;
- c. failing to implement their own recommendation as directed by Plaintiffs;
- d. failing to follow Plaintiffs' conservative investment instructions;
- e. failing to communicate with Notz Stucki in a timely and diligent manner on issues that affected Plaintiffs' investment;

f. failing to act consistent with a reasonable standard of care when providing legal services to Plaintiffs, caused by or contributed to Defendant Joffe's physical health problems that impaired judgment and the other defendants' failure to supervise or acquaint or implement Plaintiffs' investment objectives; and

g. while under a physical impairment, failing to protect Plaintiffs' interest by ensuring that other attorneys of Defendant Duane Morris would properly manage Plaintiffs' matters in his absence in accordance with their specific requests.

65. Defendant Duane Morris is liable for the professional malpractice of Defendants Joffe and Barg.

66. In addition, Defendant Duane Morris was aware of Defendant Joffe's lack of competency and failed to care for its clients (e.g. Plaintiffs) by allowing Defendant Joffe to continue handling Plaintiffs' estate matters.

67. Defendant Duane Morris failed to notify Plaintiffs of Defendant Joffe's sub-standard performance and failed to properly supervise his performance.

68. By its aforesaid conduct, the skill, knowledge, care, and competence exercised by Defendant Duane Morris fell below acceptable professional standards.

69. Plaintiffs would not have created the Stony Lane Trust to be managed by Notz Stucki but for the legal advice, representations, and recommendations made by Defendants.

70. In addition, Plaintiffs did not authorize Defendants to allocate their assets in high-risk investments with Notz Stucki.

71. Defendants have breached their duties to Plaintiffs.

72. As a direct and proximate result of the aforesaid negligence of the Defendants, Plaintiffs suffered legal and actual damages in an amount substantially in excess of the jurisdictional minimum of this Court.

**WHEREFORE**, Plaintiffs hereby demand judgment against Defendants, jointly and severally, for damages substantially in excess of the jurisdictional minimum of this Court, plus costs of this suit, pre-judgment and post-judgment interest, recovery of Plaintiffs' attorneys' fees, and for other such other and further relief as this Court shall deem just and appropriate.

### **COUNT II – BREACH OF CONTRACT**

73. Plaintiffs hereby incorporate all previous paragraphs hereof as if fully set forth herein.

74. The Defendants' aforesaid agreement to represent Plaintiffs for a fee gave rise, by implication, that Plaintiffs would be provided with professional services consistent with those expected of the legal profession at large.

75. The breach of duty, lack of skill, knowledge and competence, set forth in pertinent preceding paragraphs, constituted a failure on the part of Defendants to provide legal services consistent with those expected of the legal profession at large and of international estate planning attorneys, and was therefore a breach of that aforesaid implied contractual obligation.

76. The Defendants' aforesaid agreement offered to provide Plaintiffs' legal services for the formation of an accurate foreign asset protection trust.

77. Defendants breached their contractual obligations by failing to follow Plaintiffs' directives of asset allocation.

78. As a direct and proximate result of Defendants' breaches, Plaintiffs suffered legal and actual damages well in excess of the jurisdictional minimum of this Court.

**WHEREFORE**, Plaintiffs hereby demand judgment against Defendants, jointly and severally, for damages well in excess of the jurisdictional minimum of this Court, plus costs of this suit, pre-judgment and post-judgment interest, recovery of Plaintiffs' attorneys' fees, and for other such other and further relief as this Court shall deem just and appropriate.

**COUNT III – QUANTUM MERUIT/ UNJUST ENRICHMENT**

79. Plaintiffs hereby incorporate all previous paragraphs as if fully set forth herein.

80. Pursuant to Rule 1020 of the Pennsylvania Rules of Civil Procedure, Plaintiffs plead in the alternative that it conferred certain benefits upon the Defendants including, but not limited to, payment for services to be rendered in accordance with the specific instructions of the Plaintiffs.

81. Defendants issued invoices for, accepted payments for, and appreciated all benefits conferred upon them by Plaintiffs.

82. Defendants have retained the benefits conferred by Plaintiffs without appropriately and fully compensating Plaintiffs therefor.

83. Defendants mislead Plaintiffs by, *inter alia*, invoicing them for services rendered when, in fact, said services, as discussed in more detail above, were not in accordance with the specific instructions of the Plaintiffs but rather, to the contrary, were services that resulted in substantial and continuing damage to Plaintiffs.

84. It is unjust and inequitable for the Defendants to retain the benefits conferred by Plaintiffs without fully compensating Plaintiffs therefor.

**WHEREFORE**, Plaintiffs hereby demand judgment against Defendants, jointly and severally, for damages well in excess of the jurisdictional minimum of this Court, plus costs of

this suit, pre-judgment and post-judgment interest, and for other such other and further relief as this Court shall deem just and appropriate.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury of all issues so triable.

**THE JACOBS LAW GROUP, PC**

Dated: June 23, 2011

By: 

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*Attorneys for Plaintiffs*

# Exhibit A

## The Notz, Stucki Group

20 December 2008

Dear Client,

We are writing to provide you with greater detail of our exposure to Bernard Madoff. Losses have been incurred in the following funds: Plaza Investments International Ltd, ("Plaza") and its feeder funds, Rytz International Ltd ("Rytz") and Vendôme Selection S.A. ("Vendome"). A total loss is expected in each of these funds. DGC Pendulum Ltd and its feeder funds, DGC Euroarbitrage Ltd, Swissarbitrage S.A. and Sterlingarbitrage Ltd, had a 7.6% exposure to Plaza.

### **What business did Madoff operate?**

Bernard Madoff Investment Securities LLC ("Madoff") is a prominent international market-maker founded in 1960 and active in New York and London. The firm's main business was making markets in large-cap US equities, with a strong presence on the New York Stock Exchange (NYSE). Madoff was a leader in the US 'third market' which trades US listed equities away from the exchange floor.

Madoff ran two other businesses: proprietary trading (i.e. they would take positions in shares to try to generate a profit for their own account in the same way that many investment banks generate a large part of their profits) and discretionary account management for external clients. It is the discretionary account management business that is the focus of the investigation, and which claimed to hold significant client assets.

Madoff is a registered U.S. broker/dealer regulated by the SEC and FINRA (formerly NASD) in the US. Madoff Securities International Ltd, the London arm of the business, is regulated by the FSA in the UK and is a member of the London Stock Exchange and NASDAQ Europe.

The firm is led by its founder, Bernard Madoff, who controlled the discretionary account management business. Proprietary trading and market making are each headed by one of Mr Madoff's two sons, who have worked at the firm since graduating. Total headcount is around 200 employees; 20 people were said to operate the managed accounts, including 12 dedicated investment professionals.

### **What was Plaza?**

A number of third parties – typically asset management firms, funds-of-funds and family offices – had set up discretionary accounts with Madoff, who managed them in such a way as to generate consistent, low-volatility returns. Notz Stucki invested in such managed accounts through Plaza, and its feeder funds, Rytz and Vendôme.

Plaza is an investment vehicle which was incorporated in the BVI in 1998. It is administered by BDO-Compagnie Fiduciaire in Luxembourg, has UBS Luxembourg as its Custodian, and is audited by PriceWaterhouseCoopers.

### **Did you understand what Madoff did?**

We understood what he claimed to do. The Madoff managed accounts would periodically be directed to buy a basket of highly liquid large-cap US stocks from the universe of the S&P100 index (the OEX). The strategy would protect downside market risk by purchasing an

equivalent notional amount of put options on that index. The cost of these puts would be funded by selling an equivalent amount of call options on the same index. The options would be written at strike prices that were slightly wider than the index (hence the description of a 'split-strike' strategy). If the index rose, the split strike would allow the strategy to capture a small gain, the upside being limited by the strike price of the call options. If the index fell, the puts would protect the equity positions and the strategy would expire without a profit. Occasionally the strategy would 'lift' the call option leg of the trade for very short periods of time to allow greater capture of market moves. When the strategy was not 'live' in the market, the account would be invested in very short-dated government T-bills.

The investment risks associated with such a strategy are relatively low due to the options collar. These included the possibility of one or more stocks falling sharply compared to the index, or of an options counterparty failure – both of which are infrequent events.

It is important to highlight the fact that media reports mentioning that Madoff ran a hedge fund are incorrect. While there are similarities with hedge fund strategies, the structure of the business and the accounts that were set up in conjunction with it are quite different. In addition the strategy did not employ leverage.

#### **What due diligence did you perform?**

As with any investment, full due diligence was conducted including many site visits to Madoff's offices. In addition to a detailed assessment of the investment opportunity, our staff conducted research with auditors, custodians, lawyers, administrators and counterparties – including stock exchange bodies such as the Depository Trust Company which cleared the trades for the accounts. We also met regularly with Mr Madoff himself as well as with past Madoff employees. No evidence to suggest improper practice was ever discovered.

#### **Who is Bernard Madoff?**

As part of our formal investment process, character references were sought on Mr. Madoff. In every respect these indicated that he was of the highest standing in both the financial world and the wider community. Mr. Madoff served as vice chairman of NASD ("National Association of Securities Dealers"), now FINRA ("Financial Industry Regulatory Authority") was a member of its Board of Governors, and Chairman of its New York region. He was a member of the Securities Industry Association Board of Directors. He helped found and was Chairman of the Board of the National Securities Clearing Corp. He was also a member of NASDAQ Stock Market's Board of Governors and its Executive Committee, and served as Chairman of its trading committee. He was prominent in many philanthropic organisations and activities.

#### **Were you comfortable with Madoff holding custody of the assets?**

It is quite normal for an SEC-registered broker-dealer to hold client assets in custody. Even so we questioned Madoff about the custody but it was represented to us that it was necessary in order to allow effective and efficient construction of the options collar. He needed custody so that he could post assets as collateral to counterparties as required.

The media have raised questions about this practice, but this seems to stem from confusion about the structure of a broker-dealer (which can hold client assets) and a hedge fund (which would normally hold assets with a separate broker known as a 'prime broker'). The key question for broker-dealers is that the assets of different clients are segregated from each other and from the firm's assets – the SEC checked this and found it to be satisfactory.

**Did you check the results of the strategy?**

Yes. Madoff sent us individual trade tickets and statements, showing all transactions for the month and month-end balances. Hence we believed we had good 'transparency'. We regularly checked these statements to ensure accurate pricing and to calculate for ourselves the monthly profit or loss generated by the transactions. We also monitored the performance of the strategy in the context of market action to verify that it was in line with what we would expect given option and index price movement. PriceWaterhouseCoopers, the auditors of Plaza also performed numerous audit tests and issued clean audit opinions.

**Were you concerned that the returns were 'too good to be true'?**

No. The returns that Madoff reported were in fact relatively modest. Over the past five years the annual returns have ranged from +8.5% to +11.7%, contrary to media reports of higher numbers. It is true that returns were higher in the 1990s but this was during a bull market, and during a period of higher interest rates. If the strategy was not being implemented, the return was consistent with T-bills; if Madoff entered the market then the results could be observed in relation to the reported trading activity.

It is also important to note that, contrary to press reports, the strategy experienced several negative months. In short, the pattern of returns generated by the accounts was in line with the strategy that was represented to us. Rather than being too good to be true it was 'dull but steady'.

**What did you understand to be Madoff's source of return?**

Madoff represented to us that the return available to a simple split-strike conversion strategy would be around 5% after transaction fees. However he claimed to be able to improve on this with the aid of tools specially developed in his market-making business. These included:

- proprietary models which would allow him to predict short term market movements with some accuracy so that he would remain in T-bills when the market was falling;
- sophisticated systems and software that allowed for very efficient execution;
- an added layer of discretionary input derived from his organisation's extensive experience in financial markets.

**What importance did you attach to the role of regulators?**

For every investment that we make, we conduct extensive and detailed due diligence, according to our internal research process and analysis. We do not rely on third parties such as ratings agencies, consultants or regulators to approve investments. We will consider the involvement of regulators, or other agencies, as a positive sign. But ultimately any investment made is based on our judgement.

In the case of Madoff, we were aware that the business was regulated by both the SEC and FINRA/NASD. We believed this was a positive thing, as some years ago there were concerns that Madoff might be 'front-running' client orders on the market-making side. We were given particular comfort in the case of Madoff as the operation was reviewed as part of a widespread industry enquiry into potential market malpractice in the early part of the decade. With the benefit of hindsight it appears we were given a false sense of security by the clean reviews conducted by the SEC, as the agency has recently admitted it failed in its duty to monitor the operation.

As a result of a change in SEC regulations, Madoff had the opportunity to de-register his account management business from SEC oversight several years ago. He declined to do this and remained under the SEC for both his broker dealer and account management business.

In addition, other investment funds advised by Madoff, were registered and approved for distribution by the Swiss Federal Banking Commission, as well as by the CSSF in Luxembourg.

**Is it true that Madoff charged no management fee?**

Yes. However they charged 4 cents per share of commission for every trade they made. Based on an estimated average stock price in the basket of \$60, \$20bn of assets, and 7 trades per year, Madoff would have generated annual revenues of approximately \$185m, making their business highly profitable.

**How could the fraud remain undetected for so long?**

First, it is not clear when the fraud started. The SEC suit alleges that it had been running since at least 2005. Mr Madoff has made remarks that suggest it goes further back. One possibility is that the strategy was in fact legitimate but that the proprietary trading activity lost money and profits from one were used to cover the losses of the other. However, we emphasise that even now, after it has been exposed as a fraud, we do not have many of the answers.

Fraud can be very hard to detect. Fraudsters go to great lengths to conceal their activities. In the case of Madoff, not only was he highly respected but also extremely experienced in his field. This meant that he had expert knowledge which allowed him to construct what is now emerging as one of the most complex and elaborate frauds of all time. Certainly some people raised concerns. We were aware of these and investigated them. All of our enquiries led us to believe that he was operating a legitimate, profitable business.

**What is the expected recovery of assets invested with Madoff?**

Based on Mr Madoff's reported comments it appears that part or all of the discretionary strategy was fictitious. Hence we do not expect any meaningful return of invested money.

**How much have Plaza, Rytz, and Vendôme lost?**

Assuming a complete loss of all assets managed by Madoff, the total loss amounts to US\$ 737 million.

**What action are you taking?**

We are in discussion with lawyers in various jurisdictions to determine what course of action to take next. Our intention is to pursue all possible avenues that may lead to a recovery of assets or any other form of redress.

**What is the impact on Notz Stucki?**

At Notz Stucki we remain constantly alert to the possibility of all forms of malpractice. This is the first occasion in more than forty years of a material loss of client assets through fraud. We deeply regret that, despite great effort and care, we failed to avoid this situation.

However we emphasise that Madoff's structure, as a broker-dealer managing discretionary accounts, was different from a typical hedge fund and from the other funds in which we are invested. His status as broker dealer carried certain risks, which we estimated to be small, but also appeared to offer considerable advantages. With the benefit of hindsight we can see this was wrong.

The Notz Stucki group remains strong and has recently added to its investment team. It continues to be committed to its core business of allocating part of its clients' capital to hedge funds and other liquid securities.

#### **What questions remain unanswered?**

Many questions remain that will only be answered as investigators complete their work of unravelling this complex and colossal deception. Early indications suggest that Madoff's accounts are in a state of chaos and that clarity of the situation will take many months. Some unresolved questions include:

- Was the strategy always fictitious or did it 'go bad' after it had been running for some time?
- Who was involved in the reported deception? Did Mr. Madoff act alone or did others collude?
- How was Mr. Madoff able to elude discovery for so long, despite on-site visits from due diligence teams and a recent inquiry by SEC inspectors that concluded there was no irregularity at the firm?
- According to media reports, Mr. Madoff and his family lost sizeable amounts of their own money in the fraud. Why would he do this?

Given continuing uncertainty, we believe it is inappropriate to speculate further about the situation at this time.

We cannot begin to express our regret at learning of this fraud. We are all deeply shocked, but please be assured that we are working diligently to uncover the full facts and will keep you updated as more information is revealed.

Should you have further questions in the meantime please do not hesitate to contact us.

Yours faithfully,

**The Notz, Stucki Group**

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

SARAH AND DANIEL J. KEATING III, :

*Plaintiffs,* :

v. :

DUANE MORRIS LLP, :  
STANLEY M. JOFFE, ESQ., and :  
STANLEY A. BARG, ESQ., :

*Defendants.* :

Court Term: May, 2011

Civil Action No.003899

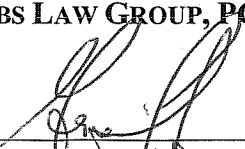
**CERTIFICATE OF MERIT AS TO DUANE MORRIS LLP**

I, Gene M. Linkmeyer, Esq., hereby certify that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the practice or work that is the subject of the Complaint against Duane Morris LLP fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, and/or that the claim that this defendant deviated from acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard.

**JACOBS LAW GROUP, PC**

Dated: June 23, 2011

By: \_\_\_\_\_

  
Gene M. Linkmeyer, Esq.  
Attorney I.D. No. 88765  
2005 Market Street, Suite 1120  
Philadelphia, PA 19103  
215-569-9701

*Attorneys for Plaintiffs*

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

SARAH AND DANIEL J. KEATING III, :

*Plaintiffs,* :

v. :

DUANE MORRIS LLP, :  
STANLEY M. JOFFE, ESQ., and :  
STANLEY A. BARG, ESQ., :

*Defendants.* :

Court Term: May, 2011

Civil Action No.003899

**CERTIFICATE OF MERIT AS TO STANLEY M. JOFFE, ESQUIRE**

I, Gene M. Linkmeyer, Esq., hereby certify that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the practice or work that is the subject of the Complaint against Stanley M. Joffe, Esquire, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

JACOBS LAW GROUP, PC

Dated: June23, 2011

By: 

Gene M. Linkmeyer, Esq.  
Attorney I.D. No. 88765  
2005 Market Street, Suite 1120  
Philadelphia, PA 19103  
215-569-9701

*Attorneys for Plaintiffs*

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PHILADELPHIA COUNTY, PENNSYLVANIA

SARAH AND DANIEL J. KEATING III, :

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v. :

DUANE MORRIS LLP, :  
STANLEY M. JOFFE, ESQ., and :  
STANLEY A. BARG, ESQ., :

*Defendants.* :

Court Term: May, 2011

Civil Action No.003899

**CERTIFICATE OF MERIT AS TO STANLEY A. BARG, ESQUIRE**

I, Gene M. Linkmeyer, Esq., hereby certify that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the practice or work that is the subject of the Complaint against Stanley A. Barg, Esquire, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

JACOBS LAW GROUP, PC

Dated: June 23, 2011

By: 

Gene M. Linkmeyer, Esq.  
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*Attorneys for Plaintiffs*

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

SARAH AND DANIEL J. KEATING III, :

*Plaintiffs,* :

v. :

DUANE MORRIS LLP, :  
STANLEY M. JOFFE, ESQ., and :  
STANLEY A. BARG, ESQ., :

*Defendants.* :

Court Term: May, 2011

Civil Action No.003899

CERTIFICATE OF SERVICE

I, Gene M. Linkmeyer, Esq., hereby certify that I caused a true and correct copies of the foregoing Complaint, Certificate of Merit as to Duane Morris LLP, Certificate of Merit as to Stanley M. Joffe, Esquire, and Certificate of Merit as to Stanley A. Barg, Esquire to be served this day via the Prothonotary using Electronic Case Filing pursuant to Pa.R.C.P. 205.4 and Philadelphia Civil Rule 205.4 upon the following:

Paul C. Troy, Esq.  
Kane, Pugh, Knoell, Troy & Kramer, LLP  
510 Swede Street  
Norristown, PA 19401  
*Attorneys for Defendants*

Dated: June 23, 2011

  
\_\_\_\_\_  
GENE M. LINKMEYER