

## Litigators of the Week: Stuart Singer and David Barrett of Boies Schiller

By **Susan Beck**  
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After seven years, more than 1,000 pages of court rulings, 78 depositions and four appeals, Stuart Singer and David Barrett are finally nearing the end of their battle for investors who lost roughly \$3 billion to so-called feeder funds run by Fairfield Greenwich Ltd. that funneled money to Ponzi schemer Bernard Madoff.

On Wednesday the two partners at Boies, Schiller & Flexner filed a \$55 million settlement agreement with Pricewaterhouse Coopers entities that they accused of negligence in auditing the Fairfield funds. Manhattan U.S. District Judge Victor Marrero approved the settlement on Thursday, bringing the total recovery in the case to more than \$230 million, counting previous settlements with other defendants.

“Our view is that this is the best recovery made by investors in any of the [Madoff] feeder fund litigation,” says Singer. The court-appointed plaintiffs team also includes Robert Finkel of Wolf Popper and Victor Stuart of Lovell Stewart Halebian & Jacobson. PwC Canada is represented by Kirkland & Ellis, and PwC Netherlands is represented by Hughes Hubbard & Reed.

Fund administrator Citco Group settled for \$125 million last year. Fairfield Greenwich settled in 2012 for at least \$50 million, and administrator GlobeOp settled for \$5 million. None of the settlements include admissions of wrongdoing.

The plaintiffs accused the defendants of breaching their fiduciary duties to investors by misleading them about the quality of the feeder funds. The defendants countered that these claims were barred by the Securities Litigation Uniform Standards Act, or SLUSA, which prohibits certain plaintiffs from bringing securities fraud class actions in the guise of state law claims. The defendants also argued that New York’s Martin Act, which gives the state attorney general power to crack down on financial fraud, also pre-empted the claims.

Courts in other Madoff feeder fund cases have accepted these defense arguments. But plaintiffs convinced Marrero that their claims should mostly go forward. The Fairfield plaintiffs were helped by a ruling in another Madoff feeder fund case handled by



Stuart Singer, left, and David Barrett, right.

Singer and Barrett. There, in a case brought on behalf of investors in Kingate Global Fund Ltd. and argued by Barrett, the U.S. Court of Appeals for the Second Circuit held last year that ALUSA doesn’t bar claims like these because it only pre-empts allegations of fraud, not claims of a negligent breach of fiduciary duty.

The Boies Schiller team also beat back an attempt by Irving Picard, the trustee for Madoff investors, to enjoin their litigation. Picard claimed that the feeder fund litigation would interfere with his efforts to recoup money for those who had accounts directly with Madoff. (The \$11 billion fund collected by Picard is not available to feeder fund investors.)

In one unusual twist in the case, the plaintiffs discovered that the Dutch general counsel of one of the Citco defendants had never been licensed as a lawyer in the Netherlands, where he practiced. Singer and Barrett convinced the court that the attorney-client privilege didn’t protect communications involving the Dutch lawyer. “We got emails and depositions that were very helpful against Citco,” Barrett says. “It’s one of the few decisions on attorney-client privilege in the jurisdictional context.”

Singer and Barrett praised members of the Boies Schiller team who contributed to this result: Sashi Bach, Carlos Sires, Eli Glasser and Howard Vickery.

Counsel for the plaintiffs will be asking for a 30 percent contingency fee, which is the amount that the court awarded them from the previous settlements. Madoff litigation has also been to a boon to Boies Schiller in another way: The firm has hired three former prosecutors from the Southern District of New York who helped prosecute Madoff and his cohorts.

Said Singer: “This was very hard fought litigation, and we’re pleased to be able to obtain what we think is an excellent result.”

**BOIES, SCHILLER & FLEXNER LLP**