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## Long road to restitution for victims

BY CARRIE MASON-DRAFFEN  
carrie.mason-draffen@newsday.com

For the many victims of Bernard Madoff's vast Ponzi scheme, the road to restitution promises to be long and hard.

It is a saga with many moving parts. Lawyers, including some on Long Island, have rushed to file civil lawsuits to get their clients to the front of the restitution line. But they aren't the only ones jockeying for position. The Securities and Exchange Commission also has filed civil lawsuits against Madoff. And federal prosecutors are going after ill-gotten gains as well.

How will this all play out? Here are some considerations:

### The pecking order

If federal prosecutors use money-laundering statutes to go after assets, the government could seize all the recovered funds and take control of the restitution issue, which lawyers, by filing lawsuits early, hoped to prevent, legal experts said.

"To the extent that [they file early], that advantage is going to go away if the federal government takes all the money and distributes it," said Michael Simons, a former federal prosecutor and law professor at St. John's University in Jamaica.

That concerns Brad Friedman, a partner at Milberg LLP in Manhattan, who is representing more than 100 Madoff victims and paints an even grimmer scenario. "Ordinarily in forfeiture actions, the government keeps that money," Friedman said. "That would be an outrage."

### Avenues to restitution

Irving Picard, the court-appointed trustee who is overseeing the liquidation of Madoff's business, has recovered about \$1 billion in assets so far. He will determine who gets what from that pot.

Twelve claimants so far are eligible for the \$500,000 maximum payment from the Securities Investor Protection Corp.,

according to that nonprofit group whose funding primarily comes from fees charged to member brokerages.

The SIPC fund has between \$1.6 billion and \$1.7 billion, said Stephen Harbeck, the president and chief executive.

The group, no doubt anticipating many more payouts, has moved to replenish those funds by increasing what members pay as of April 1 from the flat fee of \$150 to one quarter of 1 percent of operating revenue, Harbeck said. Fees then could range from \$150 to millions of dollars, he said.

The SEC and the federal prosecutors are also going after ill-gotten gains and will determine how those are distributed.

Jerry Reisman, a Garden City attorney representing 14 victims, said he is considering suing other Madoff family members and feeder firms that invested on behalf of victims, among others.

The bottom line for investors, particularly those who lost millions or billions, is how much can be recovered.

"The main issue in the civil case remains, are there assets that the lawyers can recover and get into the hands of investors?" said Michael Perino, also a St. John's law professor. "That remains the unanswered question."

### Victims could be sued

Further complicating the restitution issue, some victims may be forced to repay any profits they received from the fraudulent business under a legal concept known as claw back.

Some 30 victims have called Reisman's firm, Reisman, Peirez & Reisman, with concerns over claw back, he said. His office is assembling a defense team to represent them.

"People who have lost everything, who received perhaps monthly distributions to live on, who are retired and have no other sources of income," Reisman said, "may be the subject of lawsuits against them."