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[Back to Article](#)

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## Madoff investors may be on the hook for 'clawback' suits

Sheri Qualters / Staff reporter

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Investors who cashed out of Bernard Madoff's alleged Ponzi scheme may be on the hook for so-called "clawback" lawsuits brought by a bankruptcy trustee looking to recover money for fraud victims.

Firms say clients that invested in Bernard L. Madoff Investment Securities LLC, which allegedly defrauded investors of \$50 billion, are worried about the possibility of clawback cases, which are extremely common in bankruptcies following Ponzi schemes. Investors targeted for clawbacks may have varying avenues of recourse, depending on what state they live in and whether they have assets besides their primary residence. The Securities Investor Protection Corp., a membership organization of securities broker-dealers, placed Madoff's company in bankruptcy liquidation on Dec. 15. *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC*, No. 08-01789 (S.D.N.Y. Bankr.).

Firms fielding inquiries include Boston's Goulston & Storrs; Seattle-based Hagens Berman Sobol Shapiro, which has [pending lawsuits against Madoff's company and a hedge fund](#); and Houston's Susman Godfrey, which started its own [investigation into Madoff's firm in mid-December](#).

Investors may be vulnerable if they've withdrawn money within the past six years — the statute of limitations in New York state, where Madoff's company is headquartered, said Susman Godfrey partner Harry Susman. "It's a common thing to happen in a Ponzi scheme when it collapses," Susman said.

Clients, potential clients and victims to whom Hagens Berman is speaking about the Madoff matter "are getting concerned," said Berkeley, Calif., partner Reed Kathrein.

"The issue may cause, until there's clarity on it, victims to go into hiding," Kathrein said.

Hagens Berman is representing investors in Massachusetts Mutual Life Insurance Co.'s hedge fund Tremont Group Holdings Inc., Massachusetts Mutual's subsidiary Oppenheimer Funds Inc. and Tremont's auditors, KPMG LLP, over investments made with Madoff. *Peshkin v. Tremont Group Holdings Inc.*, No. 1:08-cv-11183 (S.D.N.Y.).

The firm also sued Madoff's company and two feeder funds in federal court in California late last year. *Chaleff v. Madoff*, No. 2:08-cv-08260 (C.D. Calif.)

Klueger & Stein of Los Angeles isn't representing Madoff investors yet, but it expects clawback cases based on its work with for clients victimized by a Ponzi scheme masterminded by EarthLink co-founder Reed Eliot Slatkin that unraveled earlier in the decade, said Bob Klueger. The Slatkin bankruptcy estate racked up more than \$240 million in unsecured claims allowed by the court, and the trustee sought to recoup more than \$100 million through clawback lawsuits. *In re Reed E. Slatkin*, No. 9:01-bk-11549 (C.D. Calif., Bank.).

The two clients Klueger represented settled with the bankruptcy trustee because they made a business decision not to litigate, Klueger said. "They didn't fold [and pay] 100 cents on the dollar, but it was certainly a shock [to them] and not pleasant," Klueger said.

Investors who live in states with an unlimited homestead exemption, which prevent creditors from taking a home used by a debtor as a primary residence, may be able to avoid clawbacks, Klueger said.

Investors from states with a shorter statute of limitations, including Massachusetts, can also use that as recourse to

fight clawbacks, said Goulston litigator Richard J. Rosensweig.

They can say, "I didn't go to New York, and this guy did business all over country," Rosensweig said.

Investors who cashed out may be required to return capital gains, and possibly principal, Susman said.

"If there's any evidence that they knew something was foul when they withdrew the money would have to give back principal as well," Susman said. But even investors who are forced to disgorge money may get some of it back when the bankruptcy trustee distributes all the collected funds, Susman said.

"It will be put into a pot and distributed to everyone," Susman said. "They will still get something back."