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NEWS IN BRIEF

Madoff Trustee: JPMorgan Officials Warned of Fraud

Emails and other internal documents show that executives at JPMorgan Chase were complicit in Bernard Madoff's massive fraud, lawyers seeking to recover funds for his victims said yesterday. The lawyers work for court-appointed trustee Irving H. Picard, who filed a \$6.4 billion complaint under seal late last year against JPMorgan, Mr. Madoff's primary bank for two decades. The parties have since agreed to make public portions of *Picard v. JPMorgan Chase & Co.*, 10-AP-4932, the lawyers said.

The material supports allegations that "the bank's top executives were warned in blunt terms about speculation that Madoff was running a Ponzi scheme," Deborah H. Renner, a partner at Baker & Hostetler, said in a statement. "Yet the bank appears to have been more concerned only with protecting its own investments in [the Madoff firm's] feeder funds." Mr. Picard is also a partner at Baker & Hostetler. It was unclear when the complaint would be made public. There was no immediate response to messages left for the attorneys.

In a statement yesterday, JPMorgan said the complaint "is meritless and is based on distortions of both the relevant facts and the governing law." The bank has denied having any suspicions about Mr. Madoff, saying it followed all commercial banking regulations in its dealings with him.

Mr. Picard is in the midst of a two-year campaign to recover funds for investors in Mr. Madoff's fund with a flurry of lawsuits against financial institutions and brokers. Last year, he filed a \$2 billion suit against UBS AG over similar allegations that the bank called "completely unfounded." Lawyers have accused JPMorgan and its affiliates of being "willfully blind" to "numerous red flags surrounding Madoff," including the unwavering double-digit returns he reported to wealthy investors on fictitious account statements.

—Associated Press

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Judge Denies Bail to Man Accused of Making Threats

A federal judge has denied bail for a Long Island man accused

of threatening dozens of federal regulators. Defense attorney Bruce Barket sought to have Vincent McCrudden, 49, released on bail following charges last month that he e-mailed threats to federal regulators. Mr. Barket argued in court papers that while Mr. McCrudden, of Long Beach, may have sent crudely written messages, he never intended to actually harm anyone.

Prosecutors say 47 federal securities regulators and others were targeted by Mr. McCrudden, who has had longstanding feuds with some of the officials. Eastern District Judge Denis Hurley said in court yesterday that he denied the bail because of the specific nature of some of the e-mails.

—Associated Press

Character Committee Interviews Set for Tuesday

The Committee on Character and Fitness for the Appellate Division, First Department, is scheduled to interview candidates on Tuesday, Feb. 8. See Court Notes on page 15 for a list of appearances.

State Senate Faces Constitutional Fight

New York's Senate and the once little regarded post of lieutenant governor may be heading into a constitutional crisis. Democratic Attorney General Eric Schneiderman is reviewing a rules change this week by the Senate's Republican majority to limit the Democratic lieutenant governor's power if there are no votes over leadership. Democrats in the Senate asked for the legal analysis.

Republicans say the change assures senators will decide who leads the chamber if their 32-30 majority slips to a 31-31 tie. Democrats call it a power grab counter to the state Constitution. Democratic Lieutenant Governor Robert Duffy presides over the Senate, but votes only in ties on procedural matters. This challenge seeks to define a procedural matter.

—Associated Press

Chevron Files RICO Countersuit on Contamination Claim

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City Told to Pay School Directly For Disabled Child's Tuition

BY MARK HAMBLETT

COURTS have the power to order New York City's Department of Education to directly reimburse a private school for tuition for a disabled student whose parents could not afford to pay the tuition upfront, a federal judge has ruled.



Judge Gardephe

Addressing a case of first impression, Southern District Judge Paul Gardephe rejected the city's arguments that the private tuition remedy, available in situations where the city has failed to provide a free and appropriate public school education to a disabled student, applies only to parents who have the means to pay.

In most situations, parents who have won a finding that the city was unable to provide an appropriate education may place their children in private schools, pay tuition and then seek reimbursement as a remedy under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1415 (i)(2)(C)(ii).

But here, in the case of *Mr. and Mrs. A v. New York City Department of Education*, 09 Civ. 5097, Judge Gardephe said the authority of a court under the act "to grant such relief as the court determines is appropriate" includes the power to order payments directly to the school.

The controversy began when a hearing officer in a state administrative proceeding found the city had failed to provide a free, appropriate public education to D.A., the 14-year-old autistic son of Mr. and Mrs. A, for the 2007-2008 school year.

The hearing officer also found that the Rebecca School on East 30th Street in Manhattan was an appropriate placement for D.A. and that equitable considerations favored an award of tuition funding. The hearing officer ordered the Department of Education to pay the tuition balance for the

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Online

» The Southern District decision is posted at nyfj.com.

Court Orders Trial to Consider State of Marriage Under No-Fault

BY DANIEL WISE

AN UPSTATE Judge has become the second to rule that a trial is required if a party disputes the factual underpinnings of a claim under the state's new no-fault divorce law, a measure aimed in part at eliminating the need for lengthy and expensive legal proceedings in contested divorces.

Essex County Justice Robert J. Muller ruled on Feb. 1 that an "immediate trial" was required to resolve whether a 47-year marriage was "broken down irretrievably," as is specified in the language of the no-fault statute, Domestic Relations Law §170(7), which took effect in October.

Justice Muller's ruling in *Strack v. Strack*, 841/10, follows the Jan. 26 short-form order of Brooklyn Justice Eric I. Prus requiring a trial in *Straffolino v. Straffolino*, 55910/10. That case had been appealed to the Appellate Division, Second Depart-

ment, said Patricia A. Fersch, who represents the wife in *Straffolino*.

In the Essex County case, Judith A. Strack sought a no-fault divorce claiming her marriage was irretrievably broken because she and her husband, Jeremiah F. Strack, lived apart during the winter months and had separate interests and social schedules. She also stated that there is "no emotion" in the marriage.

Mr. Strack disputed his wife's claims and asked for summary judgment on the issue.

Justice Muller denied summary judgment but granted an immediate trial. He did not address the issue of pretrial discovery.

In his opinion, Justice Muller recognized that "clearly the tenor" of



Justice Muller

the new law's legislative history as voiced by both legislators its proponents, was that a divorce would "lessen litigation which was viewed as 'time consuming and expensive' including the judiciary."

Nonetheless, Justice Muller noted that the new law is a panacea for those hoping to

trial. "Rather," he wrote, "it is a new cause of action subject to the same rules of practice governing the subdivisions which preceded it." Specifically, he noted that DRL §173 which provides for a right to trial by jury on issue of grounds in divorce not amended to exempt the no-fault provision.

Sandra Miller, the former Department Justice who

Online

» The Essex County Supreme decision is posted at nyfj.com.

FUTURE OF THE PROFESSION

Lawyers Face New Challenges From Global Competition

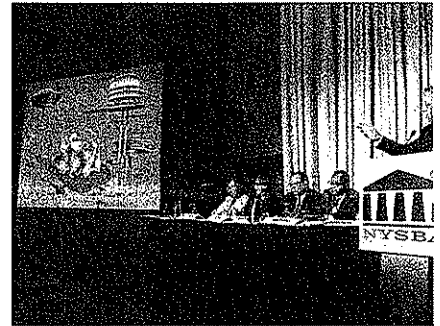
BY JOEL STASHENKO

THE FUTURE of the legal profession is brightest where forward-looking attorneys have the "energy, the optimism and the can-do attitude" to prosper in a shifting economic and technological age, says Toronto attorney Simon Chester.

Unfortunately, Mr. Chester told New York attorneys gathered for the annual meeting of the New York State Bar Association last week, that description applies more in other countries where lawyers and law firms often are more nimble in delivering legal services.

"Don't look arrogantly at England, at the Philippines or India," Mr. Chester, who has written extensively about legal trends, warned several hundred attorneys over a telephone hookup after he was grounded in Canada by bad weather.

Mr. Chester was part of a panel on the future of the profession during the President's Summit at the annual meeting at the Hilton New York. Two days later, a special committee appointed by state bar Presi-



State Bar President Stephen P. Younger addresses a gathering last week on the future of the profession during the group's annual meeting at the Hilton New

dent Stephen P. Younger of Patterson Belknap Webb & Tyler reported preliminarily to the association's House of Delegates about serious and perhaps unprecedented challenges facing members of the New York legal profession.

The report argues that New York lawyers are facing more and more

competition: "Aware of it virtually every lawyer now operates in a globalized environment with increased competition. Practitioner in Elizabethtown can have a client with a legal firm involving a supplier in a law firm in Manhattan can legal work to Bangalore"

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to be delivered by

The Honorable Gerard E. Lynch

Judge, U.S. Court of Appeals for the Second Circuit and Paul J. Kellner Professor of Law, Columbia Law School

Monday, February 7, noon - Hofstra Law School, Sidney R. Siben and Walter Siben Moot Courtroom, Room 308

Hofstra Law Clinics and the Community

Part of Hofstra University's 75th Anniversary Program
Friday, February 25, noon - Hofstra Law School, Room 308

Distinguished Practitioner Lecture

Judith A. Livingston '79

Senior Partner, Kramer, Dillof, Livingston & Moore

Monday, February 28, 5 p.m. - Hofstra Law School, Room 308
 Registration is not required.

Upcoming Alumni Events

Open to Hofstra Law alumni, family and guests.
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South Florida 40th Anniversary Celebration

Thursday, February 10, 6-9 p.m.
 Hosted by Mark P. Schnapp '76, Co-Chair, White Collar Criminal Practice, Greenberg Traurig, LLP, Miami

Washington, D.C., 40th Anniversary Celebration

Sunday, April 3, 6-8:30 p.m.
 Hosted by Martin Cargas '86, Vice President, VS Consulting, Inc.

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remainder of the school year. The department appealed and, while a state review officer upheld the findings on the education, the hearing officer annulled the tuition remedy, ruling that the parents were not entitled to tuition payment because they had not been able to pay the Rebecca School out-of-pocket.

Judge Gardephe said it was well established that parents pursuing an administrative challenge may enroll their child at a private school at their own financial risk and then seek reimbursement if they prevail on their challenge.

But in this case, the parents of D.A. could pay no more than a small portion of Rebecca School's \$84,900 annual tuition. They entered into a monthly payment plan whereby they would pay the tuition in small increments while they pursued their challenge and sought direct reimbursement to the school.

Judge Gardephe found that the original hearing officer and the review officer were both correct to rule in favor of the parents on the city's failure to provide an appropriate education, and the Rebecca School was an appropriate placement under the test outlined by the U.S. Supreme Court in *Sch. Committee of the Town of Burlington v. Dept. of Educ.*, 471 U.S. 359 (1985).

He said the defendants "do not and cannot credibly argue" that D.A. was offered a placement in another school in August 1997, just before the onset of the school year, and he rejected the city's claim that "parental intransigence" was the reason a placement could not be made.

Addressing the main point, Judge Gardephe said that, in considering whether the private school tuition remedy is limited to parents who pay upfront, "it is worth recalling that numerous provisions of IDEA demonstrate special Congressional solicitude for the educational needs of disabled children from low-income families" and ensur-

The act does not explicitly authorize the tuition reimbursement remedy for parents who pay upfront, he said, but the *Burlington* Court "nonetheless had little difficulty in unanimously holding that IDEA authorized such relief," and found that the reimbursement remedy must be available to vindicate "the child's right to a free appropriate public education."

Since *Burlington*, Judge Gardephe said, efforts to limit the broad discretionary language of the act have failed.

While no court has directly ruled on the issue, the judge noted that within the courts of the Second Circuit a number of judges have "stated or suggested in dicta that a direct tuition remedy is available where parents have presented a meritorious *Burlington* claim but lack the financial means to pay private tuition out-of-pocket."

In fact, he said, the city offered "no authority" to support the result that the city can be ordered to reimburse parents for tuition but not the school where their children are placed.

"A contrary ruling would be entirely inconsistent with IDEA's statutory purpose, including the goal of providing a free appropriate public education to the least privileged of the disabled children in our nation," he said.

Michele Kule-Korgood and Tamara Roff of Queens represented the plaintiffs, along with Caroline J. Heller of Greenberg Traurig.

Ms. Kule-Korgood called it "a wonderful decision."

"We're thrilled because it will help ensure not only D.A.'s family but all families will be able to receive a free and appropriate education regardless of their financial status. And in circumstances when a child with a disability has been denied a free public education they will be able to seek an appropriate non-public placement even if they can't front the tuition," she said.

Assistant Corporation Counsel David A. Rosinus represented the city defendants.

Mark Hamblett can be contacted at mhamblett@alm.com.

Corrections

An article yesterday, "Republicans Appear Skeptical at Haligan Confirmation Hearing," incorrectly stated the number of successful George W. Bush nominees for the U.S. Court of Appeals for the D.C. Circuit.

Four of his nominees were confirmed.

The headline for a News in Brief item yesterday about the merger plans of two matrimonial firms misspelled one of the firms' name. It is Clair, Greiter. The name, however, was spelled correctly in the body of the item.

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