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Fulbright Can't Shake Malpractice Suit Over Petters Scheme

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Carolina Bolado

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A Florida bankruptcy judge refused Monday to dismiss a $748 million lawsuit accusing Fulbright & Jaworski LLP of failing to properly advise funds involved in Tom Petters' $3.6 billion Ponzi scheme, causing them to lose out in the bankruptcy claims process.

U.S. Bankruptcy Judge Paul G. Hyman denied Fulbright & Jaworski's motion to dismiss the suit brought by Barry Mukamal, the trustee for Palm Beach Finance Partners LP, who says the law firm failed to advise the largest lenders of Petters' Ponzi scheme that bankruptcy was an option available to them in October 2008, a month after the scheme was revealed.

The funds — Palm Beach Finance Partners LP and Palm Beach Finance II LP — did not file for bankruptcy until November 30, 2009, a yearlong delay that caused them to lose out on numerous claims that they could have otherwise asserted successfully, according to the trustee.

Fulbright & Jaworski argued that Mukamal had failed to allege each lost claim and claims objection, but Judge Hyman said the allegations in the trustee's suit were supported by enough facts at this stage in the proceedings.

"Although the plaintiff will eventually have to detail and prove each specific lost claim and lost claim objection, at this stage in the proceedings, without the benefit of discovery, the allegations discussed above are adequate," Judge Hyman said.

Petters is currently serving 50 years in federal prison for swindling investors from 1995 to 2008 by claiming to make money reselling consumer electronics to big-box

retailers, such as Wal-Mart Stores Inc. and Costco Wholesale Corp.

Instead of executing any legitimate transactions, Petters forged business documents and diverted billions of investor dollars to bankroll his extravagant lifestyle and enrich his co- conspirators, according to his indictment.

The Palm Beach funds were among the largest lenders to the Petters scheme, according to court documents. After the scheme unraveled, they began communicating with Fulbright & Jaworski in October 2008, and later that month signed a retention agreement with the firm, according to the trustee's complaint.

Mukamal alleges that Fulbright & Jaworski knew that other investment funds involved in the Petters scheme had filed for bankruptcy protection. The firm also internally discussed the option of insolvency for the Palm Beach funds, but never advised them to consider bankruptcy, according to the suit.

The trustee sued Fulbright & Jaworski in November, claiming legal malpractice and objecting to the firm's request for legal fees.

> "The trustee is pleased to move forward with his substantial claim against the Fulbright firm as part of his broad efforts to maximize the returns to victims of the massive Petters fraud," the trustee's attorney Michael Budwick of Meland Budwick, P. A., told Law360.

An attorney for Fulbright declined to comment.

In August, Mukamal's suit against General Electric Capital Corp. was kept alive by Judge Hyman, who refused to dismiss a claim that the lender knew of and perhaps committed at least one covert act that furthered the Ponzi scheme.

Two loans from GECC were critical to keeping Petters' scheme alive, according to the trustee. GECC discovered the fraud in 2000, when it checked on a deal with Costco and learned the company had never done business with Petters, according to the trustee. But GECC didn't inform Palm Beach or any other investor, according to the suit.

Mukamal is represented by Michael S. Budwick, Solomon P. Genet and Peter D.

Russin of Meland Budwick, P. A.

Fulbright & Jaworski is represented by Scott L. Baena of Bilzin Sumberg Baena Price & Axelrod LLP.

The case is Mukamal v. Fulbright & Jaworski LLP, case number 9:12-ap-02123, in the U.S. Bankruptcy Court for the Southern District of Florida.

The bankruptcy case number is 9:09-bk-36379 in the same court.

–Additional reporting by Kat Greene and Brian Mahoney. Editing by Andrew Park.