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Former investors could still be targeted

By Greg Farrell in New York

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Investors who had the good fortune to liquidate their holdings in Bernard Madoff's funds are not necessarily in the clear.

If Mr Madoff's investment advisory business turns out to have been, in his own words, a "Ponzi scheme", the people who cashed out early could find themselves targeted by a court-appointed trustee.

Courts have in the past considered such early withdrawals as "fraudulent conveyance", meaning any gains seen to be made were not deemed to be "proper" gains from a legitimate investment.

The precedents for such actions are numerous, starting with the blow-up of Bayou Management, a $450m hedge fund that collapsed in 2005.

In that case, Jeff Marwil, the trustee responsible for liquidating Bayou's assets, sued investors who had cashed out before Bayou's collapse.

Mr Marwil's stated goal, which he has almost reached, was to return as much as 65 cents on the dollar to every investor wiped out at Bayou's end.

One Bayou investor targeted by Mr Marwil was fund manager Sterling Stamos, which is owned in part by Fred Wilpon. Mr Wilpon, who also owns the New York Mets baseball team, is reported to have been a victim of Mr Madoff.

Another case that appears similar to Mr Madoff's, albeit on a smaller scale, involved Dana Giacchetto, who pleaded guilty in 2000 to defrauding some of his celebrity investors in his Cassandra Group.

The trustee, Robert Geltzer, sued film stars Cameron Diaz, Tobey Maguire, Ben Stiller and Tim Roth, on behalf of investors, to recover funds already paid out to them. Mr Geltzer also sued Michael Ovitz and Ms Diaz's manager, Rick Yorn.

Victoria Leacock, a victim in that fraud, says Mr Geltzer was able to recover more than 30 cents on the dollar for her as well as others whose savings were wiped out.

Ross Intelisano, an attorney who represented investors in Bayou Management, says the Madoff fraud could generate some unusual family dynamics.

Given that Mr Madoff's investors often came to him from word-of-mouth recommendations among family members, it is likely that some investors who got out early could be pitted against relatives who lost millions and will now seek recovery.

Mr Intelisano says investors steered to Mr Madoff by their banks, including Santander and BNP Paribas, may try to take legal action against them.

Another attorney, Sidney Liebesman, says if the allegations against Mr Madoff are true, wronged investors could take action against third-party asset managers who recommended putting money into Mr Madoff's funds.

"Victims should look at pursuing claims against the asset managers who didn't do their due diligence," he says.

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