

Auditors negligent in Castor Holdings collapse, judge rules

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MONTREAL

PUBLISHED APRIL 15, 2011

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A Quebec Superior Court judge has ruled that the auditors for a real-estate-investment company at the centre of a \$1.6-billion financial collapse were negligent, ending a 12-year legal battle by investors in Montreal-based **Castor Holdings Ltd.**

"The whole team at our firm feels incredibly exhilarated," said Mark Meland of Fishman Flanz Meland Paquin LLP, one of the lead lawyers acting for the investors in Castor, which collapsed in 1992.

"It's a big, big win."

Despite the epic length of the case, which is believed to be the longest trial in Canadian history, Friday's ruling is not likely to be the last word. Prior to the result, both sides said an appeal was expected, no matter who won.

The Castor litigation, which is also believed to be the largest auditors' negligence case in Canada, could end up having broader implications for the auditing profession across the country.

Many shareholder lawsuits against auditors don't get very far because of previous court decisions that auditors can't be held professionally responsible for misrepresentations by clients, said Toronto-based forensic accountant Al Rosen.

Friday's decision may help bolster the case for auditors' responsibilities in situations where fraud or other financial irregularities occur, he said.

"I hope it wakes up the rest of Canada, but I'm not expecting any immediate change," he said. "Perhaps it will encourage lawmakers to pass tougher legislation."

Castor was the creation of German-Canadian businessman Wolfgang Stolzenberg, who is on the RCMP's wanted list for alleged fraud and believed to be living in Germany.

Following the collapse, a group of investors – including major European banks, Chrysler Canada Inc.'s pension fund and two Canadian credit unions – filed lawsuits totalling about \$1-billion against Coopers & Lybrand, Castor's auditor, allegedly it failed to properly audit the company.

Their case has dragged on for more than 16 years, 12 of them in court, and included the filing of more than 18,000 exhibits.

In a hefty 752-page decision released Friday, Madam Justice Marie St-Pierre of the Quebec Superior Court ruled that Coopers & Lybrand failed to perform its professional services as auditors, in accordance with generally accepted auditing and accounting standards.

She said Coopers & Lybrand also issued "faulty opinions" concerning Castor's financial situation.

"This outcome is disappointing for our clients," said Yvan Bolduc of Heenan Blaikie LLP, a member of the legal team acting for the defendants. He did not rule out an appeal.

"We're studying [the decision] and when we are done, we will make the appropriate recommendation to our clients."

Judge St-Pierre's judgment relates directly to one investor's case, that of Peter Widdrington – the former chief executive officer of John Labatt Ltd. and chairman of the Toronto Blue Jays baseball club – who died in 2005, when the trial was in its seventh year. The Widdrington ruling sets out the common issues and is binding on other pending actions brought against Coopers & Lybrand by other investors in

the Castor fiasco.

The judge ruled that Mr. Widdrington suffered damages as a direct result of negligence on the part of Coopers & Lybrand and ordered that his estate be compensated \$2.7-million plus court costs and interest.

The judgment concluded that Castor's audited financial statements for 1988, 1989 and 1990 were materially misstated and misleading, and that Coopers & Lybrand periodically issued other faulty opinions on its financial position from 1988 to 1991.

The findings of professional negligence are applicable to and binding in respect of the other pending actions against Coopers & Lybrand, which add up to more than \$1-billion, according to Mr. Meland.

Mr. Meland, who was present on the first day of the trial back in September of 1998, said it's gratifying that such a long and arduous legal journey has ended with a win that essentially upholds all of the principal positions put forward by the plaintiff.

Among the reasons the trial – which comprised two proceedings – took so long were the difficulties of gathering evidence from dozens of Castor offices in Canada and abroad, plus an interruption when the presiding judge underwent heart surgery and subsequently had to be replaced.