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PwC loses bid to avoid claims in Quebec

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The Quebec Court of Appeal has dismissed the joint appeal of PricewaterhouseCoopers and Coopers & Lybrand in the on-going case involving Montreal-based Castor Holdings Ltd.



The decision, which came down Friday, is an important win for the plaintiffs in their efforts to be compensated for monies lost as a result of the “egregious negligence of Coopers in the services it provided to the Montreal-based company, Castor Holdings Ltd.,” says Mark Meland, a partner with Montreal’s Fishman Flanz Meland Paquin LLP

With interest the claims amount to more than \$1 billion. Meland says the decision also sends a message to PwC and Coopers and its individual partners that the Quebec courts will not assist in their efforts to “evade financial responsibility for judgments rendered, and to be rendered, against Coopers or in their continued litigation strategy which has been described by the courts as ‘a scorched-earth war of attrition.’”

As announced on Jan, 9, 2014, the Supreme Court of Canada dismissed Coopers’ application for leave to appeal in the “test case” on negligence (the action instituted by the late Peter Widdrington — former CEO of John Labatt Ltd. and president of the Toronto Blue Jays) and confirmed Coopers’ liability for its professional negligence and for the resultant harm suffered by third parties who relied on its opinions when deciding to invest in or lend money to Castor.

PwC has publicly taken the position it has no responsibility towards the Castor claimants. However, when PwC was formed in July 1998, a mere two months before the start of the Widdrington trial, Coopers’ assets were transferred to the new entity, purportedly leaving its liabilities and contingent liabilities (including the Castor claims) behind. The plaintiff in last



Friday's appeal was the Trustee in Bankruptcy for Castor, Richter Advisory Group Inc. represented by Fishman Flanz, which also represents Widdrington and various Canadian and foreign banks.

"We took a 'bulk-sale' proceeding in Quebec where essentially the conclusion we're seeking is that all of the assets that were transferred from Coopers & Lybrand to PricewaterhouseCoopers remain subject to any judgment we ultimately are able to achieve in the various cases," says Meland.

PwC took the position because Coopers & Lybrand and Pricewaterhouse were Ontario-based firms the laws of Quebec were not applicable and they made an exception to dismiss the bulk-sale proceeding on the basis that Quebec did not have jurisdiction. It was unsuccessful before the Superior Court and the Court of Appeal.

"That means now in addition to pursuing our claims against Coopers & Lybrand, now that they have been found to be negligent we intend to pursue our claims against PwC up to the value of all of the assets of Coopers & Lybrand that were transferred to the new firm," says Meland.

Richter alleged the transfer of Coopers' assets in 1998 was illegal, as it failed to comply with the applicable public order provisions of the Civil Code of Quebec governing the sale of an enterprise. PwC's and Coopers' attempts to block Quebec's jurisdiction to rule on this matter were unsuccessful before both the Superior Court and the Court of Appeal and these firms will now have to defend this substantial action before the Quebec courts.

On behalf of the plaintiffs Fishman Flanz is also suing all of the professional liability insurance companies that insured Coopers and Lybrand at the time.

"In that case the issue before the court is whether or not the defence costs —which are enormous — incurred by Coopers & Lybrand and funded by the insurance companies — should not deplete the amount of insurance available to satisfy our claims," says Meland.