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How to Sue Your Auditors –
The Supreme Court Weighs In At $40 Million

**The Supreme Court has confirmed that auditors can be held liable.
That's big news – and potentially big dollars for your clients.**

Since 1997, the Supreme Court "Hercules" decision has protected auditors from claims by shareholders and lenders. But Livent has now opened up a way around this, by having the company itself sue the auditors.

Deloitte was found liable to Livent by the Superior Court, the Court of Appeal, and the Supreme Court.

However, once you reframe liability, you have to reframe damages.

Reframed damages were calculated based on the increase in the liquidation deficit from:
         a) what the liquidation deficit would have been if Deloitte had acted competently, to
         b) the actual liquidation deficit.

The Supreme Court chose to quantify Livent's damages at: a) the date when Deloitte issued their statutory audit report (April 1998), rather than b) the date when Deloitte should have resigned (August 1997). This quantified the damages at $40.425 million, down from $84.75 million.

The Supreme Court reasoned that Deloitte's negligence in preparing the audit report in April 1998 is the first negligent act that the company is entitled to rely upon. The Superior Court and Court of Appeal had reasoned that if Deloitte had resigned, the company would have been placed in receivership or bankruptcy, thus crystalizing the liquidation deficit.

2014 ONSC 2176, Justice Gans J, dated April 4, 2014
2016 ONCA 11, Justices Strathy C.J.O, Blair and Lauwers JJ.A, dated January 8, 2016
2017 SCC 63 McLachlin C.J., Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ., dated December 20, 2017

Still to be heard, the case brought by Philips Services against Deloitte. Presumably this case will move ahead, now that the Supreme Court has ruled on the Deloitte and Livent case.

Get my help in framing damages in your cases.

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