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Get Your Damages Right: a $2.4 billion Lesson

Be careful how you claim your damages. This $2.4 billion claim was dismissed before it even got to trial, on the basis of a motion attacking the plaintiff's damage quantification.

Because the plaintiff was not able to support their damages claim, the whole action was dismissed on the basis of that motion.

Background

Fairfield Funds invested in Bernie Madoff's fund (BLMIS). In retrospect, Fairfield, along with many others, felt this was a bad investment. PwC (the defendant) audited the financial statements of both BLMIS and the Fairfield Funds. Upon the failure of BLMIS, the liquidators of the Fairfield Funds (the plaintiff) sued PwC.

The defendants then brought a motion attacking the plaintiff's quantification of their damages. The court found that the plaintiff's damages claim was overstated. The net effect of these adjustments, and a number of smaller adjustments, was to reduce the plaintiff's claim from damages of $2.4 billion, to negative damages (a benefit) of $857million.

This court found that the claimed liability to the:

- Madoff investors was not consistent with the Settlement Agreement that Fairfield Funds entered into with the Security Investor Protection Act Trustee; and
- Fairfield Fund investors was overstated because it was based on the phantom earnings of BLMIS.

"The Liquidators claim that had PwC discovered the (BLMIS) fraud earlier on April 24, 2007, rather than when the fraud became known, the Fairfield Funds would have been economically much better off than they were in comparison to their actual position when the fraud was disclosed on December 11, 2008. They used the formula based on the … actual liquidation deficit, less the estimated liquidation deficit that would have resulted if the assets had been liquidated on April 24, 2007. … The formula was used in *Livent Inc. (Receiver of) v. Deloitte & Touche,* 2014 ONSC 2176; aff'd ONCA 11; leave to appeal to the SCC granted."

Get my help in framing Damages in your cases.

Peter Macaulay, CPA, CA●IFA, MBA, is a CA designated specialist in investigative and forensic accounting.
He focuses on damages in commercial disputes. pmacaulay-assoc.com 416.642.6010

Costs and Counsel

The motion for summary judgment was granted, and the action dismissed. Liquidators were ordered to pay the costs of PwC of $452,000 for the motion, and disbursements of $735,185.35, to a total of $1,187,185.35.

Before: Newbould J.
Peter F.C. Howard, Patrick O'Kelly and Aaron L. Kreaden for the plaintiffs
Gerald L.R. Ranking, Sarah J. Armstrong and Kimberley Potter for the defendants
2017 ONSC 3447

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