P. Macaulay & Associates Inc.
130 King Street West, Suite 1800, Toronto, ON M5X 1E3
P 416.642.6010 E pmacaul@pmacaulay-assoc.com

Livent and Deloitte

Reframing of damages leads to $84.75 million award

Justice Gans awarded $84.75 million to Livent Inc against Deloitte & Touche LLP because the damages claim was re-framed as a suit brought by the company, rather than by the investors in the company.

As you know, the Hercules Management decision* makes it difficult for investors in a company to sue the company's auditors. This explains why the suit against Deloitte was brought by the company itself.

Because the case was framed as a claim by the company against its auditors, the damages claim needed to be reframed as: What did the company lose because of the audit negligence?

[Absent the Hercules Management decision, the investors in the company would be the plaintiffs, and the damages claim would be: What did the investors lose because of the audit negligence?]

The Plaintiff (Livent) asserted that if Deloitte had not been negligent, the frauds would have been discovered sooner, and the liquidation deficit at this earlier date would have been smaller than the actual liquidation deficit.

Based on this logic, Justice Gans awarded $84.75 million to Livent.

To get my help in framing damages in your cases, please contact me.

* Livent Inc. v. Deloitte & Touche llp, 2014 ONSC 2176 / Hercules Management Ltd. v. Ernst & Young, [1997] 2 SCR, 165

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