

Court File No. CV-14-10550-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**B E T W E E N:**

**FAIRFIELD SENTRY LIMITED,  
FAIRFIELD SIGMA LIMITED, FAIRFIELD LAMBDA LIMITED AND  
KENNETH KRYS, AS LIQUIDATOR FOR FAIRFIELD SENTRY LIMITED and  
FAIRFIELD SIGMA LIMITED AND FAIRFIELD LAMBDA LIMITED**

**Plaintiffs /  
Defendants to Counterclaim**

**- and -**

**PRICEWATERHOUSECOOPERS LLP and STEPHEN WALL**

**Defendants /  
Plaintiffs by Counterclaim**

**NOTICE OF MOTION**

The defendants will make a motion to The Honourable Justice Newbould on a date to be assigned by the Court at the Court House, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an order for summary judgment;
- (b) its costs of this motion, fixed and payable forthwith; and
- (c) such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) the underlying action arises out of one of the largest and longest running Ponzi schemes in history. The fraud, masterminded by Bernard L. Madoff (the “**Madoff Fraud**”), was designed to fool the most sophisticated investment professionals, investors, authorities, regulators, advisors and auditors, including auditors of the financial statements of funds, such as the plaintiffs, which entrusted assets to Bernard L. Madoff Investment Securities LLC (“**BLMIS**”);
- (b) the Madoff Fraud was revealed on December 10, 2008 by Mr. Madoff’s own confession. The following day, on December 11, 2008, Mr. Madoff was arrested on criminal charges that he violated federal securities laws. Thereafter, the United States Attorney for the Southern District of New York filed criminal charges. On March 12, 2009, Mr. Madoff pled guilty to all 11 charges. Mr. Madoff is currently serving a 150-year prison sentence;
- (c) Fairfield Sentry Limited, Fairfield Sigma Limited and Fairfield Lambda Limited (collectively the “**Fairfield Funds**”) on their own behalf and by their liquidator, Kenneth Krys (the Fairfield Funds and Kenneth Krys together, the “**Plaintiffs**”) seek to recover \$5 billion in damages resulting from the Madoff Fraud from the defendants (collectively, “**PwC**”) who were engaged to audit the financial statements of the Fairfield Funds;
- (d) in particular, the Plaintiffs seek, among other things, damages of \$5 billion on the basis that PwC was in breach of contract and/or negligent in performing the audits

of the Fairfield Funds' financial statements for the two years ending December 31, 2006 and December 31, 2007;

- (e) specifically, the statement of claim alleges that:
  - (i) PwC failed to confirm the existence and value of the assets at BLMIS, and thus, allegedly breached duties of care owed to the Fairfield Funds (paragraph 10); and
  - (ii) the Plaintiffs suffered damages, by continuing to deal with BLMIS, relying on the audit opinions issued by PwC (paragraph 12).
- (f) in its most basic terms, the Plaintiffs argue that PwC should have uncovered the Ponzi scheme. By reason of PwC's failure to do so, the Plaintiffs say that the Fairfield Funds remained invested in BLMIS and suffered damages of \$5 billion;
- (g) the reality, however, is that the Plaintiffs' did not suffer any damage. They did not suffer damage because the Fairfield Funds' investment in BLMIS actually decreased during the period of PwC's audits. Accordingly, rather than losing money, the Fairfield Funds actually gained and recovered a net value of \$1.03 billion (in actual cash redemptions) from BLMIS between April 2007 and December 2008;
- (h) the Fairfield Funds, therefore, did not suffer damage as a consequence of PwC's audits and the Court should grant summary judgment dismissing the claim;
- (i) Rules 20.01, 20.04 and 57.03 of the *Rules of Civil Procedure*; and

- (j) Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion

- (a) The pleadings exchanged in this proceeding;
- (b) The affidavit of Stephen Wall sworn November 19, 2015;
- (c) The affidavit of M. Laurentius Marais sworn November 19, 2015; and,
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court permits.

November 20, 2015

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