

SPOKANE

Met investors will get day in court after all

John Stucke
Staff writer
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Burned Metropolitan Mortgage & Securities Co. investors will have their day in court against a big auditing firm they accuse of professional negligence.

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It's a shot at a potential payday that could top \$200 million, after U.S. District Judge Fred Van Sickle on Tuesday reversed earlier tentative rulings and rejected motions by PriceWaterhouseCoopers LLP to dismiss the lawsuit. He encouraged the sides to rekindle settlement talks and drop next month's 20-day trial.

The rulings were a major hurdle for investors who are now members of a special creditors' trust trying to salvage the legal claims in the wake of Metropolitan's 2004 bankruptcy.

There are 16,000 investors who held \$470 million worth of unsecured debenture bonds and other Metropolitan notes. Their recovery on those investments has been reduced so far to between 4 cents and 7 cents on the dollar.

"It's a good day," said Metropolitan trustee Maggie Lyons, acknowledging the difficulties of winning at the upcoming trial.

Two dozen Metropolitan investors sat through much of the hearing, representing those who lost money. Most Met investors were retired and lived in the Northwest, making the Metropolitan collapse one of the worst financial failures in Spokane's history.

Lawyers for PriceWaterhouseCoopers declined to comment after the judge reversed direction, after writing last month that he was leaning toward siding with the large auditing firm. That would have short-circuited a case that stands as perhaps the best chance for investors to recover more of their losses.

The arguments boiled down to speculating what Metropolitan's board of directors would have done differently if the auditors had uncovered what in hindsight seem to be obvious problems.

Lawyers hired by the trust contend the entire bankruptcy may have been avoided if the auditors performed their duties in accordance with industry standards.

An expert witness from Los Angeles-based Fulcrum Financial said that had PriceWaterhouseCoopers correctly audited Metropolitan's financial books, the precarious numbers would have shocked the firm's board of directors into action.

Instead of showing profits, accurate audits of the real estate and insurance conglomerate would have revealed a poorly managed firm that was hemorrhaging cash and nearing insolvency.

The board, argued Metropolitan Trust attorney Parker Folse, would have insisted on hiring a turnaround specialist.

Fulcrum's Dave Nolte insisted that such a specialist would have taken corrective actions, ranging from selling Metropolitan's insurance affiliate Western United Life Assurance to cutting overhead costs, which could have raised \$300 million in cash as late as 2001.

That much money would have soothed a looming cash crunch and enabled Metropolitan to avoid bankruptcy.

PriceWaterhouseCoopers argued that even if its audits did reveal a company in crisis, the board was timid, was ineffectual and would not have stood up to headstrong company Chairman and Chief Executive C. Paul Sandifur Jr.

The auditor's attorney, James Cusick, pointed to board minutes where directors didn't voice concern as Sandifur outlined plans to lend \$100 million a month to high-risk commercial real estate projects.

Metropolitan's well-documented collapse happened three years after PriceWaterhouseCoopers quit auditing the books, Cusick reminded the judge, saying there's insufficient evidence of anything the auditor did to cause Metropolitan's later crisis.

He recounted an investigation by the National Association of Securities Dealers, along with those of the U.S. Securities & Exchange Commission, that halted Metropolitan's ability to sell more stocks and bonds to fund Sandifur's aggressive commercial lending strategy.

Without that new money, Metropolitan defaulted – the first time in its 50-year history that it missed a payment.

Metropolitan Trust attorney Edgar Sargent argued that the auditing firm's negligence, along with its promotion of a tax shelter sham that whitewashed the company's true financial performance from 1999 to 2001, prolonged and worsened the company's fate.

Subsequent investigations would not have been necessary had PriceWaterhouseCoopers conducted accurate audits and showed losses of about \$22 million during those years rather gains, Folse said.

"It would have prompted the board to act," he said.