

**COURT OF APPEAL FOR ONTARIO**

**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,  
FAIRFIELD SIGMA LIMITED AND FAIRFIELD LAMBDA LIMITED**  
Plaintiffs/Defendants to Counterclaim  
(Appellants)

- and -

**PRICEWATERHOUSECOOPERS LLP AND STEPHEN WALL**  
Defendants/Plaintiffs by Counterclaim  
(Respondents)

**SUPPLEMENTARY NOTICE OF APPEAL**

THE APPELLANTS APPEAL to the Court of Appeal from the judgment of the Honourable Mr. Justice Newbould dated June 7, 2017 made at Toronto (the “Judgment”).

**THE APPELLANTS ASK that:**

1. the Judgment be set aside and the Respondents’ motion for summary judgment (the “Motion”) be dismissed;
2. the costs of the appeal and of the Motion be awarded to the Appellants; and
3. such further and other relief be granted as this Honourable Court may deem just.

**THE GROUNDS OF APPEAL are as follows:**

1. The motion judge erred in law in his interpretation of the U.S. Judgments that were included in, and form part of, the Settlement Agreement, dated May 9, 2011 (the “Judgments”), which error resulted in him incorrectly finding that the Appellants did not suffer any damages.
2. The motion judge erred in misinterpreting, or not properly applying, the damages methodology that he purported to accept, which resulted in him incorrectly finding that the Appellants did not suffer any damages.
3. The motion judge erred in law by failing to consider, or misinterpreting, the legal effect of the cash received by the Appellants ~~SIPA Trustee~~ in the two years prior to the discovery of the Madoff fraud, including, but not limited to, that the amounts received amounted to a real liability that led to, and was incorporated into, the Judgments.
4. The motion judge erred in law by failing to treat the Appellants as separate entities undergoing separate liquidations with separate damages claims, which resulted in him incorrectly eliminating portions of the Appellants’ damages claim on the basis of supposed “double counting”.
5. The motion judge erred in law in his application of the jurisprudence of the Supreme Court of Canada on the approach to summary judgment by: i) faulting the Appellants for not filing sur-reply evidence in circumstances where the Appellants’ responding evidence already rebutted the Respondents’ theory on the Motion; and ii) uncritically accepting the evidence of the Respondent’s expert, Dr. Marais, who was not

qualified to provide his opinion to the Court and whose evidence was contradicted by the expert evidence submitted by the Appellants.

6. The motion judge erred in law by failing to apprehend that, even accepting the Respondents' evidence and their theory of damages, the Respondents' position still disclosed that the Appellants suffered approximately \$420 million in damages such that the Motion ought to have been dismissed.

7. Such further and other grounds as counsel for the Appellants may submit, and this Honourable Court accepts.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:** The Appellants have an appeal as of right pursuant to subsection 6.1(b) of the *Courts of Justice Act* R.S.O. 1990 c. C-43 on the basis that the Judgment appealed from is a final order of the Superior Court of Justice;

9. Leave to appeal is not required; and

10. Such other basis of jurisdiction as counsel for the Appellants may advise and this Honourable Court may allow.

~~July 6~~ August 4, 2017

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Peter F.C. Howard** LSUC#: 22056F  
Tel: (416) 869-5613

**Patrick O'Kelly** LSUC#: 24812P  
Tel: (416) 869-5633

**Aaron L. Kreaden** LSUC#60157U  
Tel: (416) 869-5565  
Fax: (416) 947-0866

Lawyers for the Appellants/  
Plaintiffs/Defendants by Counterclaim

TO: **FASKEN MARTINEAU DUMOULIN LLP**  
Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Gerald L.R. Ranking** LSUC# 23855J  
*granking@fasken.com*  
Tel: (416) 865-4419

**Sarah Armstrong** LSUC# 47747G  
*sarmstrong@fasken.com*  
Tel: (416) 868-3452

**Kimberly Potter** LSUC# 60557D  
*kpotter@fasken.com*  
Tel: (416) 364-4544  
Fax: (416) 364-7813

Lawyers for the Respondents/  
Defendants/Plaintiffs by Counterclaim

Fairfield Sentry Limited et al.  
Plaintiffs/Defendants to Counterclaim  
(Appellants)s

and

PricewaterhouseCoopers LLP et al.  
Defendants/Plaintiffs by Counterclaim  
(Respondents)

Court of Appeal File No.: C64006

---

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

---

**SUPPLEMENTARY NOTICE OF APPEAL**

---

**Stikeman Elliott LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Peter F.C. Howard** LSUC#: 22056F

Tel: (416) 869-5613

**Patrick O'Kelly** LSUC#: 24812P

Tel: (416) 869-5633

**Aaron L. Kreaden** LSUC#60157U

Tel: (416) 869-5565

Fax: (416) 947-0866

Lawyers for the Appellants/  
Plaintiffs/Defendants by Counterclaim

