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KPMG paid after Westpoint alert

NEALE PRIOR

Accounting firm KPMG was paid \$100,000 by Norm Carey's flagship company, Westpoint Corporation Pty Ltd, nine days after one of its audit partners raised alarm bells with the corporate watchdog about the property group's solvency, according to a document lodged in the Federal Court.

Insolvency accountant Ian Francis alleged in a draft report filed in the court last month that the \$100,000 payment on December 22 came on top of \$274,167.50 in other payments Westpoint made between July and October to KPMG, which audited companies in the now-collapsed Westpoint Group.

Mr Francis' draft report and other documents lodged in the court reveal that KPMG warned ASIC on Tuesday, December 13, that it suspected Westpoint was breaching Corporations Act provisions barring companies from trading while insolvent.

A transcript of a taped interview, also filed in the court, shows that KPMG audit partner Rob Kelly told investigators on December 13 that Westpoint's situation had been discussed at length four days earlier in a tele-conference that included KPMG chief executive Lindsay Maxsted.

Mr Kelly told ASIC investigators that based on the collective wisdom of the eight partners in the conference, they felt there was a reasonable likelihood Westpoint had breached insolvent trading rules.

Mr Francis said KPMG issued a formal notice to ASIC on December 13 advising it of the insolvent trading suspicions and were subsequently paid the \$100,000. "As such we expect that at least this payment could constitute an unfair preference payment," the insolvency accountant wrote.

Mr Francis lodged the report in the Federal Court last month in an affidavit that was filed in an application by the Australian Securities & Investments Commission for a liquidator to be put into Westpoint Corp.

Mr Francis was appointed administrator of Westpoint Corp on January 24, more than two months after ASIC went public with an investigation into Westpoint's web of property financing schemes that have put the savings of an estimated 4000 Australians in jeopardy.

He was working with Mr Carey on putting together a potential restructure deed for Westpoint, but no such agreement materialised and Mr Francis withdrew a legal attempt to have the ASIC liquidation application put off until early March.

Justice Tony Siopis put Westpoint into liquidation on February 16 but appointed accountants from rival firm PPB as administrators of the company after finding it would be best to have a single group as liquidators of Westpoint Corp and Westpoint Management, which was already in the hands of PPB.

But the judge rejected allegations made by Westpoint receivers at KordaMentha that Mr Francis and his Taylor Woodings partner Michael Ryan could have a lack of independence in shifting from being administrators to liquidators.

The judge said the documents filed by the administrators showed they had done good work in their investigations. But Westpoint Corp was a sizeable and complicated administration and there was still a lot more work to be done.

Mr Francis' draft report reveals Westpoint entered into a payment arrangement with the Australian Taxation Office in late 2004 but that was later terminated after the company failed to meet conditions relating to timely lodgement of returns.

Mr Francis also suggested Westpoint Corporation could have possibly been balance sheet insolvent as early as June 2004 after analysing potential guarantee claims Westpoint faced from mezzanine schemes.

He said KPMG gave an unqualified audit opinion on Westpoint's 2004-05 accounts on March 4 last year. If the company was insolvent or had doubtful solvency at that time, there would need to be an analysis of whether there was a claim against the auditor.



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