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Business

More money for Westpoint investors

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February 1, 2011 - 11:54AM

The accounting firm KPMG has settled a compensation suit brought by the corporate regulator on behalf of investors who lost money in the 2006 collapse of the property finance group Westpoint.

The Australian Securities and Investments Commission has also settled claims against Westpoint directors.

The settlement was announced in the High Court this morning, where six judges were ready to hear a constitutional challenge by KPMG to ASIC's power to sue on behalf of Westpoint investors.

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ASIC said the resolution of the actions would result in the recovery for the benefit of investors, via Westpoint's liquidators, of "up to" \$67.5 million.

The payment - \$57 million of which is due within 30 days - settles Federal Court actions ASIC had brought against directors of Westpoint companies and KPMG.

Up to another \$10.5 million is due to be paid to Westpoint Group liquidators based on confidential conditions in the settlement.

Through a combination of ASIC's compensation cases and recoveries by the liquidators, investors should be reimbursed \$160 million to \$170 million of the \$388 million they lost when Westpoint failed, ASIC said.

The regulator was seeking \$200 million from KPMG in damages for alleged auditing negligence. Its claim against the directors was for \$273 million.

The chief justice, Robert French, said the last-minute settlement had wasted the time the judges spent preparing for the case and had prevented the court from allocating today's hearing time to another matter.

Justice French said parties bringing cases to the High Court should explore settlement "well in advance of the day set down for hearing" and asked the barristers appearing for KPMG and ASIC to convey his views to their clients.

ASIC sued KPMG in 2008, alleging negligence in its audit of eight companies in the Westpoint group.

The Federal Court had scheduled the case for a three-month hearing beginning in September, allowing time for the High Court's resolution of the constitutional issue.

KPMG's barrister Alan Archibald QC said the High Court case had been settled this morning as "part of the settlement of wider proceedings".

"These parties have been striving to settle those proceedings for some time," Mr Archibald said. "It's regrettable that it was not possible to achieve settlement before this morning and KPMG for its part apologises to the court for the inconvenience."

The commonwealth solicitor-general, Stephen Gageler SC, said the timing of the settlement was also "a matter of regret" to ASIC and the regulator was "deeply conscious" of the inconvenience caused.

As late as Friday KPMG filed its submissions in reply in the case, in which it claimed that ASIC had "acquired" the right to sue KPMG from the eight Westpoint companies without paying "just terms" as

required under section 51(xxxi) of the Constitution.

ASIC has previously announced settlements of \$25.5 million in claims against State Trustees Limited and a number of financial planners.

ASIC's chairman, Tony D'Aloisio, said the settlement would avoid the delays associated with conducting the proceedings through to a trial in September.

"A confidential commercial resolution is, because of the age and circumstances of the investors, the preferred resolution in a case such as this where litigation can take years," Mr D'Aloisio said.

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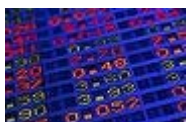
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