

The Australian

Westpoint auditor to pay \$67m after ASIC ends pursuit of KPMG

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Former Westpoint CEO Norm Carey says he is sympathetic to the company's investors who have been given a "raw deal". Picture: Ian Munro

Source: The Australian

WESTPOINT founder Norm Carey says 4000 investors in his failed property empire have been given a "raw deal" even after the corporate regulator extracted a \$67 million settlement from auditor KPMG, bringing the total funds recovered to about \$170m.

The Australian Securities & Investments Commission said its confidential settlement with KPMG and some Westpoint directors, including Mr Carey, concluded its recovery actions.

Investors are expected to see a return of about \$170m of the \$388m that was lost when Perth-based Westpoint collapsed in 2006.

The money has been recovered by ASIC as well as liquidators.

Yesterday's settlement could benefit 80 per cent of the 4000 people who put money into Westpoint's mezzanine finance schemes.

KPMG, which faced allegations of negligence in its auditing of Westpoint, declined to comment on the settlement but stressed it was not an admission of liability.

Sources said ASIC chairman Tony D'Aloisio was "very happy" with the outcome of the settlement negotiations as it would avoid further protracted litigation.

The Australian understands that KPMG paid all of the \$67.45m settlement apart from a small amount put up by the former Westpoint directors.

One source close to the negotiations suggested the directors would only pay a few hundred thousand dollars.

Hugh McLernon, the managing director of listed litigation funder IMF, said ASIC should be congratulated for its role in helping to recover so much of the money lost in Westpoint.

"It's a pity they can't do it in all cases where people have suffered a loss," said Mr McLernon, whose firm settled several of its own Westpoint actions on behalf of Westpoint investors.

"But they can't because they don't have the budget."

Mr Carey told The Australian he sympathised with Westpoint investors, claiming they had been denied a return of their total investment by ASIC's flawed decision to shut down his group in 2006. "ASIC in making its decision in the first place ought to have considered the investors and allowed the projects to be finished so investors could get their money back," he said.

"I am sympathetic to the investors -- they have had a raw deal.

"But no one is going to feel sorry for Norm Carey. I am a professional businessman -- you have to cope with these things."

Mr Carey claimed receivers and liquidators had earned about \$55m in fees since Westpoint collapsed and he believed that ASIC's investigation had cost up to \$100m. He would continue with his legal action to sue ASIC for malfeasance.

An ASIC spokesman said the \$100m figure was incorrect.

In a statement, Mr D'Aloisio said the settlement would avoid the need for a trial in September and provide an additional return for investors.

"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.

ASIC alleged that KPMG negligently carried out audits of Westpoint by failing to identify issues related to the solvency of the companies.

ASIC also claimed that KPMG should have notified it of suspected breaches of the Corporations Law.

The settlement was announced yesterday in the High Court, which was about to begin hearing a constitutional challenge by KPMG to ASIC's powers to sue on behalf of Westpoint investors.

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