

Landmark Ross clawback case close

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The difference between recovering more than \$25 million for the victims of David Ross, or stopping dead at \$3 million, will be fought over in court next week.

Investors are optimistic the action can “buck the trend” and lead to reasonable recoveries for the hundreds of small investors who were robbed.

Ross Asset Management director David Ross, 64, is currently serving 10 years and 10 months in jail for defrauding investors of about \$115 million.

His fraud is the largest single such crime committed by an individual in New Zealand, affecting about 700 investors who thought they had portfolios worth about \$380 million.

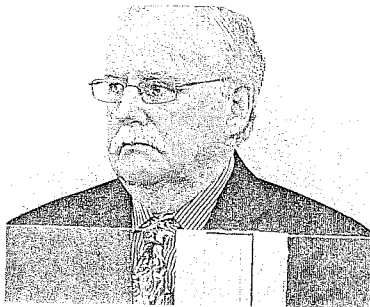
Only about \$3 million is currently left for investors after the sale of various assets owned by Mr Ross.

But liquidator PwC has filed three test clawback cases against investors who collectively withdrew \$3.8 million in fictitious profits before the Ponzi scheme's collapse.

If the liquidator's case against

the three investors is successful, it could open the door for further claims against other investors who withdrew funds from Ross Asset Management from December 2010.

Liquidator John Fisk previously stated this is worth about \$25 million, but now says “the potential sum



COUNTING CLAIMS: Investors who withdrew \$3.8 million in fictitious profits from David Ross's Ponzi scheme before its collapse are subject to clawback action from the liquidator

recoverable from such claims could be substantial.”

The three investors are disputing the claims and have filed statements of defence, the other two of which will be heard later this year.

Their identities and the court

file are covered by confidentiality orders.

But it is known one investor is an entity linked to a high-profile Wellingtonian, from which liquidators want \$2.3 million back, while another applied on Wednesday to have its clawback hearing held in secret.

Publicity surrounding the investors subject to clawback is understood to be a reason for the application.

On Monday, the first of the clawback cases is set to be heard in the High Court at Wellington, which liquidators say “should provide much clearer guidance on the circumstances when a claim should be brought.”

If successful, further claims will then be considered, though Mr Fisk declines to specify what he means by “substantial.”

Investors “optimistic”

Ross Asset Management Investor Group head Bruce Tichbon says he will not comment on the cases specifically but New Zealand investors took a “massive hammering” with the string of finance

company collapses.

In a letter to former Commerce Minister Craig Foss in September last year, Mr Tichbon wrote that 45 finance companies failed in this country in the four years to mid-2011.

From this, more than 171,000 investors lost about \$6 billion, of which Mr Tichbon says the returns have been “very, very poor.”

“We are optimistic that, with the Madoff recoveries, which are being very successful, that this recovery is going to buck the trend and produce reasonable recoveries for the small investors who've been robbed.”

So far, about \$US10.5 billion of the \$US17.5 billion lost to Bernie Madoff's Ponzi scheme in the US has been recovered.

Mr Tichbon says he will attend next week's clawback hearing, even if it is closed to the public and he has to sit outside.

“It will be noted that I was there.”

Counting on clawback

The Companies Act was the original basis for the clawback claims,

worth up to \$25 million but the Property Law Act will now also be used to extend the claim to six years before the liquidator's appointment.

Ross Asset Management investors withdrew \$60 million more than they contributed over the last five years of the company but Mr Fisk will not say how much the new claims could be worth.

Liquidators are using section 292 voidable transactions claims under the Companies Act, as well as ss294 and 297 in their argument.

Mr Fisk says a recent Supreme Court decision on voidable transactions will not have a major impact on the claims, despite commentary suggesting it might.

The Property Law Act claims are made under sections 347 and 348, on the basis investors who withdrew money in the past six years form part of a fraudulent arrangement entered into by Ross Asset Management.

The clawback claims are also supported by cases of liquidators who have made recoveries for other Ponzi schemes in the US.