

dbbr DAILY BUSINESS REVIEW

COSTA CONCORDIA Recklessness, nationalities, forums among issues

WIDE VARIABLES CLOG ROAD TO SHIP DISASTER LITIGATION

by Gregg Fields, DBR. The partial sinking — and accompanying deaths of passengers and crew — of a luxury cruise liner will lead to years of litigation.

But the nature of the cruise business means that, before any plaintiff gets to court, there are a number of questions as to how the legal process will unfurl.

Is the liability likely to be decided by an Italian court? What if the plaintiff is American? Does

maritime law apply, or international covenants such the Athens Convention or Death on the High Seas Act?

Do the captain's actions indicate some of the industry's traditional means of limiting liability are invalidated by behavior that a judge might consider reckless?

South Florida attorneys, a number of whom have represented passengers involved in other cruise accidents, say any trip to a courtroom by a Costa plaintiff is likely to be long and complicated.

For Carnival, Costa's owner and a potential defendant, one thing's



THE ASSOCIATED PRESS

The world has been riveted by images of the Costa Concordia resting sideways in the Mediterranean.

for certain: "In-house counsel for Carnival is going to be busy for some time," says one Miami lawyer.

SEE STORY, PAGE A3

ROTHSTEIN FALLOUT Award on fraud counts

Jury says TD Bank liable for \$67 million judgment

by John Pacenti, DBR. A Miami federal jury took less than five hours to award \$67 million to investors who sued TD Bank for serving as fraudster Scott Rothstein's go-to bank.

Texas-based Coquina Investments claimed the bank helped Rothstein pursue his

\$1.2 billion Ponzi scheme based on phony settlement financing. Rothstein used various TD Bank accounts, put on investor "shows" at its Weston branch and used bank personnel to assure his targets their money was safe.

The jury awarded \$32 million in compensatory damages and \$35 million in punitive damages. Coquina attorney David Mandel said the award sent a message to banks that they will be held accountable for dealing with criminals.

A bank officer said TD Bank was disappointed with the verdict and insisted the bank "had no part in this."

SEE STORY, PAGE A2



Mandel

REAL ESTATE

Properties near Brickell becoming more valuable

by Paola Iuspa-Abbott, DBR. The values of commercial properties west of Miami's Brickell Avenue are firming up, with discounted properties becoming hard to find. The owners of Rosinella restaurant on South Miami Avenue sold a 17,500-square-foot parcel with a 6,000-square-foot building for \$428 per square foot of land. The buyer plans to build a boutique hotel.

A block west, a 62-unit apartment building called Brickell Station Village sold for \$17 million, or \$274,193 per unit. Hollywood-based REMS Group sold the building more than two years after investing \$11.2 million to acquire the building in a short sale and complete the units.

"It is probably one of the few markets in South Florida that has appreciation and long-term growth," one broker says.

SEE STORY, PAGE A11

VERDICT AGAINST TD BANK

\$32 million

Compensatory damages

\$35 million

Punitive damages

\$67 million

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Jury says TD Bank liable for \$67 million judgment

by John Pacenti
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For a few minutes after the verdict was read Wednesday, only one thing was clear: A Texas-based investment group had bested one of the nation's largest financial institutions, TD Bank, in the contentious first trial involving Scott Rothstein's \$1.2 billion Ponzi scam.

The amount of damages was up for interpretation as the Miami federal jury used the same amounts for each of two fraud counts. Not even the counsel for Coquina Investments was sure.



Mandel

But the jurors made it clear as they walked out of courthouse: \$32 million in compensatory damages and \$35 million punitive damages.

The \$67 million verdict sends a clear message to TD Bank, said attorney David Mandel, who represented Corpus Christi-based Coquina. The jury awarded far less than the \$140 million sought by the investors in punitive damages.

About half of the money — \$31 million — would go to the bankruptcy trustee for the defunct Fort Lauderdale law firm of Rothstein Rosenfeldt Adler under a settlement to satisfy a clawback lawsuit.

Jurors spent about an hour deliberating Tuesday and about 3 1/2 hours Wednesday.

"This Ponzi scheme would have been

TD BANK VERDICT	
\$32 million	Compensatory damages
\$35 million	Punitive damages
\$67 million	Total

impossible without TD Bank actively involved," said Mandel, a partner at Mandel & Mandel in Miami. "I think this jury was angry with them, and it showed in the verdict."

The bank's Greenberg Traurig legal team quickly huddled after the verdict. Attorney Mark Schnapp said he needed to confer with his client and declined comment.

Ernie Diaz, the South Florida market president for TD Bank, said he was disappointed and the bank would consider all of its legal options. He reiterated that Rothstein is the one to blame. "We had no part in this," he said.

TD Bank spokeswoman Rebecca Acevedo seconded Diaz, saying, "We still maintain that we were Rothstein Rosenfeldt Adler's bank and that it was Scott Rothstein who defrauded investors. We will continue to defend the bank

SEE COQUINA, PAGE A10

COQUINA: Liability clear, but assessing damages prompts debate

against claims of wrongdoing.”

The trial was closely watched by others pursuing litigation associated with Rothstein's scam using forged court documents and fake lawsuit settlements.

“It's a big shot in the arm for the victims of the Ponzi scheme that the jury has found that there is someone who is accountable, which actually has the resources who can contribute to the victims for their losses,” said white collar criminal defense attorney David Garvin, who is not directly involved in any Rothstein litigation.

SOMETHING TO HIDE?

The jurors apparently were swayed by the plaintiff's argument that TD Bank helped Rothstein commit his fraud by serving as the setting for investor “shows” at branches where bank personnel assured investors their money was safe.

TD Bank repeatedly moved for a mistrial based on U.S. District Judge Marcia Cooke's decision to allow fired TD Bank regional vice president Frank Spinosa to testify. He refused to answer questions, invoking his constitutional right not to incriminate himself.

Cooke instructed the jury they could take Spinosa's refusal to answer about 160 questions along with other evidence to infer liability against the bank.

Mandel told the jury that evidence showed Spinosa was Rothstein's “yes man,” authored a lock letter assuring Coquina that its millions were safe in a trust account looted by Rothstein.

In a deposition last month, he said he gave Spinosa \$50,000 in cash to be his patsy.

With Spinosa refusing to answer, Mandel painted him as a witness with something to hide.

“This sends that message we asked for: that banks have to be held accountable,” Mandel said.

Holly Skolnick, another Greenberg Traurig attorney representing the bank, told jurors there was no corroborating



MELANIE BELL

Texas-based Coquina Investments claimed TD Bank helped Scott Rothstein pursue his \$1.2 billion Ponzi scheme based on phony settlement financing.

evidence that Spinosa broke the law.

She told jurors during her closing arguments that Rothstein was a well-regarded attorney and political power broker, which gave the bank no reason not to trust him.

Garvin said he expects the issue of Spinosa's testimony to be front and center if TD Bank appeals.



Skolnick

“There is also the threshold question of whether or not he represented the bank or was he simply acting as a rogue individual that should not make the bank liable for his action,” Garvin said.

Mandel noted after the verdict that Rothstein said in his deposition that on a scale from 1 to 10, TD Bank's involvement in the Ponzi was a 10.

“Rothstein was right about that at least,” he said.

Accountant Kathleen White, a representative of Coquina, said she believed Rothstein has nothing to gain by lying anymore.

“I think there are other people who are motivated to protect themselves to lie,” she said.

Mandel told the jury that TD Bank officials lied on the witness stand and the bank needed to be punished.

Jury forewoman Shondra Smith said the jury was immediately unanimous on one count of fraud and one count of aiding and abetting fraud against the bank because bank executives turned a blind eye to Rothstein's machinations.

“We were all surprised at how much they let go through, all the deposits and transfers,” she said. “At any point, they could have stopped it.”

Bank email showed there were concerns about the activity in Rothstein's accounts, including numerous money laundering alerts. But there also was jubila-

tion among executives at the increased deposits in the Weston branch where Rothstein did business with Spinosa at the helm.

While TD Bank's liability was clear cut, Smith said there was some debate among jurors when it came to assessing damages. Three questions came out of the jury room about damages. When the verdict was read, Coquina was not sure if it should combine the amounts for each count.

“It appears they split it,” said Nina Mandel, who also represented Coquina with Mandel & Mandel.

‘THE CANARY DIED’

Rothstein litigation is only heating up. A March 5 trial is slated in Broward Circuit Court where the Razorback Group investors are seeking \$200 million.

Attorney William Scherer, a partner with Conrad & Scherer in Fort Lauderdale who represents the 55 Razorback investors, said the trial was a great primer for his trial in March.

“I told everybody we viewed this case as the canary in the coal mine. And the canary died,” he said.

He said his case will include much of the same evidence brought in Coquina, including the overdraft of lawyer trust accounts, the 112 fraud alerts, lock letters, bribes and Spinosa's conduct.

“Plus we have the testimony of Scott Rothstein,” he said.

Judge Cooke denied a motion by Coquina to include a transcript of Rothstein's deposition.

Scherer said he thought the award was fair and that the jury could have hit TD Bank a lot harder on the damages portion.

“I don't think anybody can accuse this jury of being a runaway jury,” he said. “They were pretty attentive. I think they did a great job.”

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