

BMO to take billion-dollar charge after losing Ponzi lawsuit in U.S.

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People cross the street in front of the Bank of Montreal building in Toronto on Tuesday Aug. 29, 2017. Bank of Montreal is cutting jobs in its capital markets division. THE CANADIAN PRESS/Doug Ives
DOUG IVES/THE CANADIAN PRESS

A jury in a Minnesota bankruptcy court has found the U.S. arm of Bank of Montreal [BMO-T \(/investing/markets/stocks/BMO-T/\)](/investing/markets/stocks/BMO-T/) +0.61% ▲ liable for US\$564-million in damages in a lawsuit related to one of the largest Ponzi schemes in history, and the bank will take a \$1.1-billion charge as it prepares to appeal the decision.

In a verdict reached on Tuesday, the jury held BMO Harris Bank N.A. – the U.S. subsidiary of BMO – liable for “aiding and abetting breach of fiduciary duty,” according to a court filing.

It awarded US\$484-million in compensatory damages as well as nearly US\$80-million in punitive damages in favour of the trustee in bankruptcy proceedings for companies controlled by Thomas Joseph Petters, who was convicted in 2008 of leading a nearly \$2-billion fraud and was a client of a bank later acquired by BMO.

The trustee is trying to recover money for victims of the fraud. The compensatory damages were about one quarter of the US\$1.9-billion that the trustee had sought.

BMO’s \$1.1-billion charge includes the interest payments it may have to pay on the judgment. The exact amount will be decided later by a judge.

The jury found BMO was not liable on three other counts that included alleged violations related to fiduciary duties, as well as aiding and abetting fraud.

BMO said in a written statement that it is disappointed with the ruling, “which is not supported by the evidence or the law,” and the bank “intends to pursue all available legal options including appealing the jury verdict and award.” The bank also said that according to the terms of a prior settlement in another Petters-related case, “BMO Harris is entitled to recover approximately 21 per cent of any amount that it pays to the trustee.”

“We are confident that we have strong grounds for appeal,” the statement said.

The lawsuit began in 2012 and alleged that Milwaukee-based Marshall and Ilsley Bank, which BMO acquired in 2011, and a predecessor bank facilitated a Ponzi scheme run by

Mr. Petters between 1999 and 2008. Mr. Petters was revealed to have been running a US\$1.9-billion fraud over a 15-year span – at the time, the largest Ponzi scheme in history, but later surpassed by a fraud led by Bernie Madoff. Mr. Petters was convicted and sentenced to 50 years in federal prison.

As plaintiff in the lawsuit, the trustee argued that M&I facilitated the Ponzi scheme, standing by as Mr. Petters moved tens of millions of dollars in and out of his corporate and personal accounts. The pattern of money movement was wholly inconsistent with what M&I understood to be the business model of Mr. Petters's companies, the trustee alleged in the lawsuit.

Michael Collyard, a lawyer at Robins Kaplan LLP acting for the trustee, said it will also seek prejudgment interest that could bring the total award to more than US\$1-billion if its arguments are successful. Mr. Collyard intends to seek 10-per-cent annual interest, which he says is allowed by Minnesota law.

As a result, BMO will record a provision of \$1.12-billion that includes possible prejudgment interest as well as potential recoveries, which will result in an after-tax charge of \$830-million to be recorded when the bank releases its fiscal fourth-quarter financial results this month.

“We are extremely pleased with the jury’s decision to hold BMO Harris Bank accountable for its role,” Mr. Collyard said in an e-mailed statement. “This is a fantastic result for the trust pursuing recovery for the people who lost money in this fraud.”

Mr. Collyard also said he believes the award is the largest in a civil case in Minnesota’s history.

BMO went to trial last month after getting sanctioned by a judge for intentionally destroying and failing to preserve evidence.

Judge Kathleen Sanberg ruled in July, 2019, that M&I destroyed computer backup tapes in 2010 and 2011 that likely contained documents and memos sent between its bankers and

Mr. Petters. In 2014, BMO Harris Bank employees found some tapes that might have contained evidence – but then falsely told the court all tapes were gone, according to the judge.

BMO Harris Bank, the judge ruled, “has failed to be candid and has fought discovery at every step ... has lied to this court and has attempted to hide evidence on several occasions.”

Her ruling allowed the jury to hear about the evidence destruction.

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