

CASE NO. **VOLUME** **PAGE**
Cite as: Seabord Construction Inc. v. Atlantic Canada Opportunities Agency,
1998 NSCA 22

SEABORD CONSTRUCTION
INCORPORATED and SEABORD
CONSTRUCTION LIMITED

ATLANTIC CANADA OPPORTUNITIES
AGENCY

- and -

(Appellants)

(Respondent)

C.A. No. 132056

Halifax, N.S.

Freeman, J.A.

APPEAL HEARD: January 8, 1998

JUDGMENT DELIVERED: February 6, 1998

SUBJECT: Torts, Duty of Care, Negligence, Costs

SUMMARY: Krupp Mak Machinebau GmbH of Germany won a \$26,400,000 subcontract for a new diesel electric propulsion system for the Canadian Coast Guard icebreaker Louis St. Laurent. Krupp's Canadian representative Frederick Black incorporated a holding company and an operating company, NsC Diesel Inc., on his own behalf to construct a diesel engine testing facility by at Sheet Harbour, N.S. which Krupp needed to fulfil Canadian content requirements. The Atlantic Canada Opportunities Agency agreed to a repayable loan and loan guarantee, conditional on Krupp's anticipated participation. The appellant Seabord won major design and construction contracts and construction proceeded. When Krupp failed to participate ACOA refused further advances and NsC Diesel went bankrupt. Seabord's work was 90 per cent completed and it was owed \$2,755,000. It sued ACOA and its claims based on negligent misrepresentation and breach of the duty of care were dismissed with costs of \$55,375 and \$3,000 disbursements in the Supreme Court of Nova Scotia.

ISSUES: That the trial judge erred in failing to find ACOA liable for negligent misrepresentation and breach of the duty of care, and in ordering excessive costs.

RESULT: Appeal allowed as to costs but otherwise dismissed. Evidence did not support a finding of negligent misrepresentation. In the circumstances, ACOA did not owe Seabord a duty of care. Only the issue of liability, not of damages, was before the court and costs of \$55,3763 was inordinately high. Costs were reduced to \$25,000 plus disbursements with costs on the appeal fixed at \$5,000.

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DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER
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