
BONDS - MICHIGAN

Wells Fargo Advantage Nat. Tax Fee Fund v. Helicon Associates, Inc.

United States Court of Appeals, Sixth Circuit - April 2, 2013 - Slip Copy - 2013 WL 1316471

Appeals court reverses summary judgment in favor of Dorsey & Whitney on securities law and negligent representation allegations in connection with bond issuance for which the firm served as underwriters' counsel.

Michael Witucki ran a corporation that sold a building to a charter school of which he was the Chief Administrative Officer. Witucki's dual roles created a conflict of interest that violated Michigan law. Dorsey & Whitney, LLP acted as underwriters' counsel for a bond issue that financed the building purchase. Dorsey allegedly drafted the Preliminary Official Statement knowing of the conflict of interest but failed to disclose it.

As a result of the Michigan law violation and other problems with the bond issue, the chartering entity of the charter school forced the unwinding of the bond issue, which caused plaintiffs to lose several million dollars. Plaintiffs brought suit in federal district court, alleging that Dorsey & Whitney violated state and federal securities laws, and that Dorsey & Whitney was liable for common-law negligent misrepresentation.

The district court granted summary judgment to Dorsey & Whitney and the appeals court reversed, remanding the case for further proceedings

The appeals court held that plaintiffs had stated a plausible claim for relief under the Connecticut Uniform Securities Act. It was enough, at this early stage in the litigation, that Dorsey & Whitney allegedly drafted the Preliminary Official Statement and edited and revised the Official Statement knowing that the documents omitted material facts.

Under Michigan law, a third party may hold an attorney liable for negligent misrepresentation when the attorney negligently performed a contractual duty and the third party was either someone the attorney knew would rely on the information or someone the attorney should have reasonably foreseen would rely on the information. The appeals court ruled that the negligent misrepresentation claim should not have been dismissed at the summary judgment stage. Based upon the facts, a jury could determine that Dorsey & Whitney negligently performed a contractual duty when it failed to include the material conflict of interest in the Preliminary Official Statement and in the Official Statement.

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