

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **SECURITIES - MASSACHUSETTS**

### **Commonwealth v. Tradition (North America) Inc.**

**Appeals Court of Massachusetts, Suffolk. - February 21, 2017 - N.E.3d - 91 Mass.App.Ct. 63 - 2017 WL 677363**

Commonwealth brought enforcement action against broker engaged in transactions involving municipal bond derivatives, claiming that broker engaged in bid rigging and other deceptive practices in violation of Consumer Protection Act and False Claims Act.

Broker filed third-party claims against individuals and corporations with whom it had consulted in the allegedly fraudulent transactions, seeking contribution for any liability broker might have to Commonwealth, and alleging various other claims, including breach of contract, breach of the implied covenant of good faith and fair dealing, common-law indemnification, unfair and deceptive trade practices, fraud and deceit, intentional and negligent misrepresentation, civil conspiracy, unjust enrichment, and tortious interference with contractual relations.

The Superior Court Department dismissed third-party complaint against certain third-party defendants and dismissed remaining third-party claims. Broker appealed.

The Appeals Court held that:

- Contribution claims were barred due to Commonwealth and broker entering into settlement agreement that did not discharge common liability of all joint tortfeasors;
- Issue whether noncontribution claims were barred by statutes of limitation could not be resolved on motion to dismiss due to factual dispute;
- Dismissal of third-party contribution claims did not warrant drastic sanction of dismissal of third-party noncontribution claims; and
- Broker sufficiently alleged that consultant personally participated in the alleged wrongful conduct at issue.

Third-party claims, asserted by broker engaged in transactions involving municipal bond derivatives, against individuals and corporations with whom it had consulted in allegedly fraudulent transactions, seeking contribution for any liability broker might have as result of Commonwealth's claims for violation of Consumer Protection Act and False Claims Act, were barred due to Commonwealth and broker entering into settlement agreement that did not discharge common liability of all joint tortfeasors, which was prerequisite for contribution under Uniform Contribution Among Tortfeasors Act, notwithstanding broker's argument that it was not required to release third-party defendants because, at time settlement agreement was signed, statutes of limitation had already expired on any claims Commonwealth might have had against them.

Issue whether third-party claims, asserted by broker engaged in transactions involving municipal bond derivatives, against individuals and corporations with whom it had consulted in allegedly fraudulent transactions, for fraud and deceit, intentional and negligent misrepresentation, civil conspiracy, unjust enrichment, tortious interference with contractual relations, and violations of Consumer Protection Act, were barred by statutes of limitation could not be resolved on motion to

dismiss, due to factual dispute as to when broker was on inquiry notice of its potential third-party claims based on alleged bid rigging by its consultants.

Dismissal of third-party claims, asserted by broker engaged in transactions involving municipal bond derivatives, against individuals and corporations with whom it had consulted in allegedly fraudulent transactions, seeking contribution for any liability broker might have as result of Commonwealth's claims for violation of Consumer Protection Act and False Claims Act, did not warrant drastic sanction of dismissal of broker's noncontribution third-party claims, even if noncontribution parties and claims had been improperly joined in action, where dismissal would bar subsequent litigation of noncontribution claims because limitations periods had expired.

Broker, which was engaged in transactions involving municipal bond derivatives, sufficiently alleged that consultant personally participated in the alleged wrongful conduct at issue, as required to state causes of action for fraud and deceit and other torts, and broker was not required to allege facts to establish basis to pierce corporate veil in order to state such causes of action, given that employees could be held liable for torts in which they personally participated.