

Bond Case Briefs

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Cromeans v. Morgan Keegan & Co., Inc.

United States District Court, W.D. Missouri, Central Division - May 13, 2014 - Slip Copy - 2014 WL 1901197

After failed issuance, bondholders brought class action against the underwriter, Morgan Keegan, alleging material misrepresentations and omissions in the Official Offering Statement.

Morgan Keegan filed a Third-Party Complaint against counsel to underwriter and Industrial Development Authority, Cunningham, Vogel & Rost, P.C. (CVR), seeking indemnity and contribution from CVR in the event that Morgan Keegan was found liable to the bondholders for any misrepresentations in the Official Statement.

The primary, and ultimately dispositive, question presented on CVR's motion to dismiss the Third-Party Complaint was whether Morgan Keegan had plausibly alleged that CVR was liable directly to the Bondholders for the conduct that was the basis of Morgan Keegan's claims for indemnity and contribution.

Morgan Keegan claimed that CVR was liable to the bondholders for misrepresentations, express or by omission, that CVR allegedly made to Morgan Keegan. Morgan Keegan also argued that CVR owed a general duty to the bondholders to see that the Official Statement contained accurate information.

The District Court held that:

- CVR was not liable to the bondholders for negligent representation, as CVR had no way of knowing that Morgan Keegan might relay any allegedly misleading information directly to the bondholders to guide them in the transaction;
- CVR was not liable to the bondholders for fraudulent misrepresentation, as the record demonstrated that CVR believed Morgan Keegan was conducting its own due diligence review that involved verifying the accuracy of the information CVR had previously conveyed to Morgan Keegan;
- Morgan Keegan failed to state a claim for fraudulent omission because Morgan Keegan had not alleged that CVR omitted any information with the intent or expectation that its omission would influence the bond purchasers' investment decision;
- Morgan Keegan's conclusory assertion that CVR owed a duty to the bondholders to ensure the accuracy of the entire Official Statement, whether premised on CVR's purported ultimate authority over this document or otherwise, lacked a plausible basis in fact or law; and
- CVR was not jointly and severally liable for the bondholders' claims under the Missouri Blue Sky Law.

