

Bond Case Briefs

Municipal Finance Law Since 1971

E&O INSURANCE - CONNECTICUT

Town of Monroe v. Discover Property & Cas. Ins. Co.

Superior Court of Connecticut, Judicial District of Fairfield - February 6, 2015 - Not Reported in A.3d - 2015 WL 776970

The Town of Monroe sued its insurer for breach of contract after insurer declined to defend Town in a breach of contract suit due to the exclusion of contract claims in the Town's E&O policy. The Town retained its own counsel and incurred costs of defense. Following a trial, the jury returned a verdict of \$700,000 against the Town (later overturned in the *Bellsite* decision contained herein).

The Town maintained that the insurer's refusal to provide coverage under the E&O policy was a breach of contract which had resulted in damages to it and sought a declaratory judgment that the insurer was obligated to defend it and breached its obligation. The Town argued that, although the policy excluded contract claims, the inclusion of a negligent representation claim in the underlying suit obligated the insurer to defend.

The court disagreed, finding that the negligent representation claim arose out of the same facts and circumstances as the express contract claim and thus, under the terms of the policy exclusion, the insurer was not obligated to defend or indemnify the Town.

"The plaintiff Bellsite's claim alleged in count two arises out of the same facts and circumstances as does the express contract claim of count one. Specifically, Bellsite incorporated all of the paragraphs of count one into count two without alleging any specific representations or statements that were made by the plaintiff outside of the very acts that Bellsite claims constituted the creation of an agreement and which formed the basis for its claim of contractual breach. Because of the way Bellsite presented its complaint, the factual basis for the second count is tied inextricably to the factual basis for the first count. Bellsite relied on the same facts and made the same claims in both counts of its complaint. In the first count, it alleges that the town breached its contractual obligation to compensate it for services related to the development of the cell tower. In the second count, Bellsite alleges that it relied on the contractual representations of the town that it would reimburse Bellsite for expenses incurred for the development of the cell tower. Based on review of Bellsite's complaint, the court concludes that Bellsite made a claim for breach of an express and or implied contract in count one. In order to overcome any defense by the town that it could not be held liable in the absence of approval by the town council under the town charter, Bellsite restated the same facts and asserted a claim for negligent misrepresentation."