

Bond Case Briefs

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INSURANCE - MICHIGAN

Employers Mut. Cas. Co. v. Helicon Associates, Inc.

Court of Appeals of Michigan - December 1, 2015 - N.W.2d - 2015 WL 7738601

This case arose out of the outcome of a prior federal suit initiated by several fund (Funds) in this matter against parties who were insured by Employers Mutual Casualty Company (EMC). Briefly, the Funds had purchased approximately \$7 million in bonds issued by a charter school operated by Helicon Associates, Inc. The charter school was, however, not legally authorized to issue its own debt. Facing the threat of having its charter revoked, the school had to unwind the bond issue and the Funds accepted \$3.2 million in newly issued bonds in lieu of their original \$7 million investment.

In the ensuing federal court securities action, the Funds pursued claims pertaining to the bond issuance, including violations of various securities and “blue sky” laws, in addition to tort claims. The federal action resulted in a consent judgment acknowledging violation of the Connecticut Uniform Securities Act and awarding the Funds more than \$4 million.

EMC provided Helicon with a defense in the federal action under a reservation of rights, but commenced this declaratory judgment action seeking to establish that indemnity coverage was not available, under its Linebacker or Umbrella policies with Helicon, for the claims asserted in the federal action. EMC did not dispute that Helicon was an insured, but argued that four separate exclusions (return of remuneration, personal profit or advantage, guarantee on bonds, and fraud or dishonesty) applied, each of which would independently preclude coverage. Helicon counterclaimed for breach of contract and “bad faith.” The trial court found that three of the four cited exclusions applied, and it therefore granted summary disposition in favor of EMC.

The Funds appealed.

The Court of Appeals affirmed, holding that the “fraud or or dishonesty” exclusion of the Linebacker policy applied, as Helicon had committed acts amounting to fraud and dishonesty and the consent judgment constituted a “judgment or adjudication.”

“Based on our finding that the trial court correctly determined the applicability of the fraud and dishonesty exclusion, we need not consider the remaining policy exclusions.”