

RETURN DATE: SEPTEMBER 16, 2008

SUPERIOR COURT

TOWN OF BRANFORD

JUDICIAL DISTRICT OF  
NEW HAVEN

VS.

AT NEW HAVEN

DAVID S. DOYLE, ESQ., AND  
THE MARCUS LAW FIRM

AUGUST 7, 2008

COMPLAINT

FIRST COUNT: NEGLIGENCE

1. At all times mentioned herein the Defendant, David S. Doyle, Esq. was and is an attorney licensed to practice law in accordance with the laws of the State of Connecticut.

2. At all times mentioned herein Defendant Doyle was and is a partner of The Marcus Law Firm, a professional partnership engaged in the practice of law, located at 275 Branford Road in North Branford, Connecticut.

3. At all times mentioned herein Defendant Doyle was acting as the agent, servant or employee of The Marcus Law Firm, within the scope of said agency and employment.

4. At all times mentioned herein the Plaintiff, Town of Branford, ("Town") was and is a municipal corporation, organized and existing under the laws of the State of Connecticut, located in New Haven County.

5. On or about December 18, 2003, the Town filed a statement of compensation in the amount of \$1,167,800.00 for property known as 48-86 Tabor Drive. On or about January 5, 2004, a certificate of taking was filed for the above-described property.

6. The owners of the property, Thomas Santa Barbara and Frank Perotti, Jr., appealed the assessment of taking on or about May 25, 2004. New England Estates, LLC ("NEE") filed an independent appeal on June 9, 2004. The two appeals were consolidated in actions known as New England Estates v. Branford, Docket No. X01-CV-044010333 and Thomas Santa Barbara v. Branford, Docket No. X01-CV-034010334, and referred to complex litigation.

7. The Defendant Doyle, acting as the agent, servant and employee of the Defendant Marcus Law Firm, acting at all times mentioned herein within the scope of said agency, represented the Town in the aforementioned litigation from its inception through the entry of judgment on July 27, 2007.

8. In accordance with the Rules of Connecticut Civil Practice, the Court ordered that the Town disclose trial experts in the aforementioned consolidated cases by May 7, 2007.

9. At all times mentioned herein Defendants Doyle and The Marcus Law Firm knew or in the exercise of reasonable care should have known, that the value of the property located at

48-86 Tabor drive, the subject of the condemnation action, was affected by environmental contamination.

10. The Defendant Doyle, acting on behalf of The Marcus Law Firm, failed to obtain, prepare or produce any expert report concerning environmental contamination, or advise co-counsel of the court ordered date for said disclosure.

11. The above described actions constituted a deviation from the standard of care for attorneys engaged in civil litigation in the State of Connecticut. As a result of the deviations from the standard of care, the Court precluded the Town from offering expert testimony concerning the need for environmental remediation and the affect on valuation of the subject property.

12. The Defendants Doyle and The Marcus Law Firm deviated from the standard of care in one or more of the following ways:

- a. In that they failed to make a diary entry noting that the time period for disclosure of experts terminated on May 7, 2007;
- b. In that they failed to notify the Town that the Court had entered an order mandating that experts be disclosed by May 7, 2007;
- c. In that they failed to disclose experts by May 7, 2007;

d. In that they failed to notify co-counsel that the Court had entered an order mandating that experts be disclosed by May 7, 2007;

e. In that they failed to request permission of the Court to extend the time to disclose experts past May 7, 2007;

f. In that they failed to timely consult with experts; and

g. In that they failed to timely obtain expert reports.

13. In addition to the losses described above, the Town has incurred losses and damages, including but not limited to the payment of additional attorneys' fees for both trial and appellate services.

**SECOND COUNT: TOWN OF BRANFORD v. DAVID S. DOYLE ESQ. AND THE MARCUS LAW FIRM**

14. Paragraphs 1-13 of the First Count are hereby made part of this the Second Count.

15. The Marcus Law Firm represented the Town concerning claims made by NEE and Thomas Santa Barbara and Frank Perroti, Jr. for compensation including, but not limited to a suit seeking damages from the Town for, among other things, the alleged Bad Faith Use of Eminent Domain in regard to the taking and compensation given from the Town's taking of 77 acres of undeveloped land on Tabor Drive in Branford, Connecticut.

16. NEE, Thomas Santa Barbara and Frank Perotti, Jr. initiated this case against the Town, Docket No. UWY-X06-CV-03183606, by Verified Complaint dated July 18, 2003. The pleadings were closed on December 15, 2003. On August 1, 2006, NEE filed a Second Amended Complaint and on August 30, 2007, NEE filed a Third Amended Complaint.

17. The Defendant Marcus Law Firm, acting principally through Defendant Doyle, was the only law firm representing the Town from the inception of this lawsuit until May 8, 2007 when The Marcus Law Firm was replaced as chief trial counsel by the law firm of Updike Kelly and Spellacy, acting principally through Attorney Kerry Callahan.

18. From May 8, 2007 through at least November 1, 2007 the Defendant Marcus Law Firm, acting principally through Defendant Doyle, continued to represent the Town, in conjunction with the law firm of Updike Kelly and Spellacy, concerning the claims set forth in Docket No. UWY-X06-CV-03183606 S .

19. On or about February 9, 2007, at a time when the Town was being represented only by the Defendants Doyle and The Marcus Law Firm in relation to the claims of NEE, et al., as set forth in Docket No. UWY-X06-CV-03183606 S, the Court held a telephonic pretrial conference with counsel and entered an order stating that all expert witnesses who would provide testimony in the above-captioned matter had to be disclosed by May 30, 2007.

20. In accordance with the Connecticut Rules of Practice, case law, and the applicable standard of care, Defendant Doyle knew or should have known that if he failed to disclose an expert witness within the deadlines set forth in the Court's order, the Town could be precluded from calling expert witnesses in its defense at trial.

21. On or about May 8, 2007, the Defendant Marcus Law Firm, principally acting through Defendant Doyle, was replaced as chief trial counsel for the Town by Attorneys Kerry R. Callahan and Daniel R. Canavan of Updike, Kelly & Spellacy, P.C., but remained active in the defense of said claim, providing legal services to the Town through November 1, 2007.

22. Defendant Doyle failed, either orally or in writing, to inform Updike, Kelly & Spellacy of the deadline to disclose expert witnesses by May 30, 2007.

23. The Town did not disclose its expert witnesses until July 19, 2007 and July 25, 2007.

24. The Court granted NEE's July 30, 2007 supplemental motion *in limine* to exclude the Town's witnesses because their disclosure was past the deadline date of May 30, 2007. As a result, the Town was not allowed to submit the testimony of its expert witnesses during the trial. Judgment was subsequently entered for NEE in the amount of \$12,435,914. 78.

25. The Defendants Doyle and The Marcus Law Firm were negligent and careless in the manner in which they represented the Town in the aforementioned claims by NEE et al., in that the legal services they provided deviated from the standard of care of a reasonably competent legal professional engaged in the provision of civil lawsuit defense services in the State of Connecticut.

26. The Defendants Doyle and The Marcus Law Firm deviated from the standard of care in one or more of the following ways:

- a. In that they failed to make a diary entry noting that the time period for disclosure of experts terminated on May 30, 2007;
- b. In that they failed to notify the Town that the Court had entered an order mandating that its experts be disclosed by May 30, 2007;
- c. In that they failed to disclose experts by May 30, 2007 or to cause them to be disclosed;
- d. In that they failed to timely notify Updike, Kelley and Spellacy that the Court had entered an order mandating that experts be disclosed by May 30, 2007;
- e. In that they failed to request permission of the Court to extend the time to disclose experts past May 30, 2007;
- f. In that they failed to timely consult with experts; and

g. In that they failed to timely obtain expert reports.

27. The Defendants' deviation from the standard of care caused the Town damages which include, but are not limited to the loss of the lawsuit to NEE, Thomas Santa Barbara and Frank Perroti, Jr., the payment of additional attorney's fees in order to seek reversal of the jury verdict, payment of costs for attorneys for appeal, and attorney's fees for attempting to disclose experts past the deadline and moving for reargument.

**THIRD COUNT: BREACH OF FIDUCIARY DUTY**

28. Paragraphs 1-27 of the First and Second Counts are hereby made part of this the Third Count.

29. At all times mentioned herein the Defendants Doyle and The Marcus Law Firm acted as a fiduciary of the Town.

30. As a fiduciary, because of the attorney-client relationship, Defendants Doyle and The Marcus Law Firm had a superior knowledge and skill in the management of the litigation described above and owed to the Town a high degree of good faith and undivided loyalty. The Town relied upon the Defendants for advice and counsel in the litigation described above.

31. The Defendants breached the fiduciary duty owed the Town in one or more of the following ways:



- a. In that they failed to timely consult with experts;
- b. In that they failed to disclose experts or to cause them to be disclosed in accordance with the orders of the Court;
- c. In that they failed to notify the Town or the trial attorneys hired by the Town that the Court had entered an order mandating that its experts be disclosed by set dates;
- d. In that they failed to timely obtain expert reports; and
- e. In that they failed to move to extend the time by which the Town was required to disclose experts.


32. As a result of the Defendants' breach of their fiduciary duties the Town has suffered damages as described above.

WHEREFORE, the Plaintiff Town of Branford claims and demands:

1. Damages.
2. Costs.
3. Such other and further relief as this Court deems equitable and just.

PLAINTIFF  
TOWN OF BRANFORD

BY: \_\_\_\_\_


  
R. Bartley Halloran  
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74 Batterson Park Road  
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Tel: (860) 676-3222  
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WHEREFORE, the Plaintiff Town of Branford claims and demands:

1. Damages.
2. Costs.
3. Such other and further relief as this Court deems equitable and just.

PLAINTIFF  
TOWN OF BRANFORD

BY: \_\_\_\_\_

  
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**STATEMENT OF AMOUNT IN DEMAND**

Therefore, the Plaintiff Town of Branford claims damages. The Plaintiff states that the amount in demand, exclusive of interest and costs, is not less than Fifteen Thousand (\$15,000.00) Dollars.

PLAINTIFF  
TOWN OF BRANFORD

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