
New York Court of Appeals - Prior to a Default, Indenture Trustees Owe No Fiduciary Duties to Bondholders but Owe a Duty to Perform Ministerial Functions with Due Care

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On June 25, 2008, the New York Court of Appeals held that prior to a default, an indenture trustee owes no fiduciary duties to its bondholders, but does owe a duty to perform its ministerial functions with due care. A breach of this duty can give rise to tort liability. (1)

Plaintiffs, a group of insurance companies, mutual funds and investment funds, who were holders of \$750 million in notes issued by Loewen, (2) sued State Street Bank & Trust Co ("State Street"), the indenture trustee, for numerous claims. Among the claims asserted were breach of fiduciary duty as an indenture trustee and as secured party representative as well as a claim of negligence. Plaintiffs alleged that State Street's failure to deliver a required document to Bankers Trust, the collateral trustee, caused them to settle their claims in Loewen's bankruptcy at a large discount.

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