
Recent Developments Regarding Indenture Reporting Covenants

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On April 16, 2009, the Fifth Circuit, in *Affiliated Computer Services, Inc. v. Wilmington Trust Co.*, became the second federal court of appeals to hold that a failure to file reports timely with the Securities and Exchange Commission ("SEC") does not violate Section 314(a) of the Trust Indenture Act of 1939 ("TIA") or indenture covenants patterned on the language of Section 314(a). Each of the federal district courts that have considered the same issue have reached the same conclusion, contrary to the decision reached by a New York Supreme Court, in *Bank of New York v. BearingPoint, Inc.*