

Corporate Trust Litigation

Pillsbury represents banks in trust and other similar fiduciary capacities in actual and threatened disputes, litigation and bankruptcies. These representations include general advice arising out of alleged defaults, bankruptcy of an issuer or servicer, claims and litigation by investors, and claims and litigation involving third parties such as credit insurance and monoline insurers. Representative clients include The Bank of New York Mellon, Deutsche Bank, Wilmington Trust and Wells Fargo Bank, N.A.

Examples of Our Most Prominent Engagements:

Old Republic Insurance Company et al. v. The Bank of New York Mellon et al. (Ill. Cir. Ct., Cook Co.

2008-present): Defending RMBS trustee as insured in litigation brought by mortgage insurer seeking to rescind multiple mortgage insurance policies, damages and other relief. The court dismissed all claims against the client, dismissing some of those claims with prejudice. The court also held that the client, as the named assured, was a necessary party to the rescission claims.

Call v. Wells Fargo & Company and Turkle Trust v. Wells Fargo & Company (N.D. Cal. 2012 and 9th Cir. 2015):

Represented Wells Fargo in two putative class actions alleging that the redemption of trust-preferred securities breached the securities' indenture and violated the implied covenant of good faith and fair dealing. Trust-preferred securities are a type of preferred stock that is being phased out of key capital calculations under the Dodd-Frank Act. Both cases were dismissed without leave to amend; the Turkle Trust appealed and that dismissal was affirmed on appeal.

In re Washington Mutual, Inc. (Bankr. Del. 2008-2012):

Represented the senior notes trustee for more than \$4 billion in public debt in a Chapter 11 case of the parent company of the largest bank failure in US history; successfully engaged in intercreditor litigation against junior securities, thereby compelling full pay-over from junior securities to fund post-petition interest to senior securities.

The Jean Coutu Group (PJC) Inc. v. Wells Fargo Bank, N.A. (S.D.N.Y. 2007):

Represented Wells Fargo, as indenture trustee for \$850 million in notes issued by plaintiff Jean Coutu, one of Canada's largest drug store companies. Pillsbury was able to defeat Jean Coutu's summary judgment motion (which sought to have the debt transferred to a less creditorly acquirer of part of Jean Coutu's business), leading to a favorable settlement for the bondholders and protected the creditor's rights. Examples of Our Most Prominent Engagements:

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In re Adelphia Securities Litigation (S.D.N.Y. 2003):

Defended The Bank of New York as indenture trustee for \$4.3 billion of dollars of public debt in securities fraud class action litigation arising from the bankruptcy of Adelphia Communications.

Other Non-Bankruptcy Related Experience

Eleanor L. Randolph Roth IRA, et al. v. Goldstar Trust Company, et al. (Cal. Sup. Ct. Madera County 2015): Representing Wells Fargo Bank as indenture trustee in action alleging breach of fiduciary duty in connection with sale of collateral for securities issued by Sierra Foothills Public Utility District.

Firkins et al v. TitleOne Corporation (D. Idaho 2010):

Represented client in a putative class action suit involving a bond issuance from a real estate development company allegedly engaged in a Ponzi scheme. After the development company declared bankruptcy, the client was sued, as indenture trustee, for all of the losses from the bonds, breach of fiduciary duty, breach of contract and fraud. The court dismissed the case against the client.

Semi-Tech Litigation, LLC v. Bankers Trust Co. (2d

Cir. 2006): Defended Bankers Trust Co. in its capacity as indenture trustee for \$578 million in notes issued by Semi-Tech, in an action commenced by a litigation trust on behalf of former noteholders claiming that their notes were worthless as a result of alleged breaches by Bankers Trust of contracts and of the Trust Indenture Act. Obtained summary judgment in Banker Trust's favor, dismissing all claims, which was affirmed by the Second Circuit.

Republic Insurance Company et al. v. Countrywide Financial Corporation et al. (NYS Supreme Court, NY County 2010):

Defending RMBS trustee as insured in litigation brought by mortgage insurer seeking a declaratory judgment that would limit the insureds' rights.

Racepoint Partners, LLC v. JPMorgan Chase Bank, N.A. (N.Y. Ct. App. 2010):

Filed an amicus brief on behalf of the American Bankers Association supporting affirmance of a decision in a case arising out of the Enron bankruptcy. Plaintiff noteholders sued JP Morgan, the trustee on certain bonds issued by Enron, asserting that Enron and the trustee breached the governing indenture and the Trust Indenture Act when Enron filed fraudulent reports with the SEC and the trustee. The Court of Appeals affirmed the lower court's decision, holding that indenture trustees have no obligation to review issuer's SEC filings for substance.

MBIA v. Bank of America Corp, Countrywide, et al. (Cal. Sup. Ct. L.A. 2009):

Defended RMBS trustees and named trust in fraud case brought by monoline insurer. Pillsbury convinced plaintiffs to dismiss without prejudice the claims against our clients.

In re Bear Stearns Mortgage Pass-Through Certificates Litigation (S.D.N.Y. 2009):

Defended RMBS trustee and named trusts in securities fraud class case brought by investors. Obtained negotiated dismissal of the claims. The clients were not named in the amended complaint.

Goldman Sachs Mortgage Company v. Natixis Real Estate Capital, Inc. v. Deutsche Bank National Trust Company (NYS Supreme Court, NY County 2009):

Represented Deutsche Bank National Trust Company, the custodian for a series of mortgage purchase transactions, in connection with disputes relating to the bankruptcy of New Century Warehouse Corporation and its affiliates.

Marathon Structured Fin. Fund, LP v. Eastman Hill Funding I, Ltd., (NYS Supreme Court, NY County 2008):

Represented Deutsche Bank as trustee in noteholder litigation concerning asset swap hedge agreements. Marathon alleged that the trustee, the collateral manager and certain senior noteholders inappropriately arranged for the CDO to enter into timing swaps with a third party that had the effect of “smoothing” amongst quarterly payment periods payments of interest received on semi-annual paying securities in the portfolio.

Orix Properties v. The Bank of New York Mellon (N.D. Tex. 2008): Defended indenture trustee in federal litigation brought by holder of equity tranche, challenging whether or not a “rapid amortization event” occurred under an RMBS indenture.

New Mexico State Investment Council, et al v. Countrywide Financial Corporation, et al (N.M. St. Ct. 2008): Defended RMBS trustees and numerous trusts named as defendants in securities fraud action brought by various New Mexico pension funds as RMBS investors. After seeing our motion to dismiss, plaintiffs agreed to dismiss the claims against our client.

Luther, et al v. Countrywide Financial Corporation, et al (Cal. Sup. Ct. - L.A. 2008): Defended RMBS trustees and numerous trusts named as defendants in securities fraud class action brought on behalf of RMBS investors. Plaintiffs agreed to dismiss our clients.

Abas et al. v. The Bank of New York (Bankr. S.D.N.Y. 2003-2006): Defended The Bank of New York as collateral agent in post-bankruptcy litigation brought by several hundred noteholders claiming that the agent had mishandled the prior bankruptcy; all substantive claims were dismissed.

Binson v. J.E. Robert et al. (E.D.N.Y. 2003): Defended The Bank of New York as trustee in tax lien securitization against class action alleging violations of Truth in Lending Act.

Deutsche Bank Trust Company Americas v. Prinvest LLC, et al (S.D.N.Y. 2007): Represented Deutsche Bank, as the back-up servicer in an asset-backed securitization transaction. Commenced a declaratory judgment action seeking a determination that Deutsche Bank did not breach any of its duties under the applicable agreements. Case was settled favorably for our client.

Four Times Square Associates v. Cigna Investments (NY Supreme Court 2002): Represented servicer in CMBS transaction in litigation brought by borrower contesting force-placed insurance coverage.

Nacional Financiera, S.N.C. v. Bankers Trustee Co. Ltd. (N.Y. Sup. Ct. 2001): Represented Bankers Trustee, as indenture trustee with respect to approximately \$400 million of notes, in an action commenced by a guarantor of certain defaulted notes, alleging that the indenture trustee breached duties owed under the indenture that allegedly resulted in the plaintiff’s losses. Obtained summary judgment in Banker’s Trustee’s favor. In related litigation brought against Bankers Trustee by noteholders, the federal district court granted motion to dismiss the claims against the client.

Craig v. The Bank of New York (S.D.N.Y. 2000-2003): Defended trustee of insurance trust against class action alleging that trustee failed to assure that qualifying securities were deposited into trust; obtained summary judgment for trustee based on defense of reliance on advice of counsel.

Other Bankruptcy Related Experience

In re K-V Pharmaceuticals (Bankr. S.D.N.Y. 2012-2013): Represented Deutsche Bank as trustee for \$200 million of convertible subordinated notes; successfully engaged in intercreditor litigation against senior creditors, and defeated senior claim for payover from subordinated notes to fund senior post petition interest.

In re American Home Mortgage Holdings (Bankr. D. Del. 2007): Represented The Bank of New York Mellon as master servicer and trustee on a number of RMBS transactions in connection with the chapter 11 case of the originator and servicer of loans; engaged in week long trial concerning debtor’s proposed sale of servicing business; succeeded in establishing appropriate conditions on sale.

In re Delta Air Lines, Inc. et al. (Bankr. S.D.N.Y. 2007): Represented The Bank of New York Mellon as indenture trustee for structured securitized debt (in ETC and PTC structures) on approximately 130 aircraft in leveraged lease transactions aggregating over \$2 billion; engaged in litigation involving tax indemnity claims and foreclosure aircraft mortgages.

In re Armstrong World Industries (D. Del. 2005): Represented the indenture trustees for \$500 million in senior notes issued by flooring manufacturer Armstrong World Industries, Inc. in a Chapter 11 case involving substantial asbestos-related claims.

In re G-I Holdings (Bankr. N.J. 2004-08): Defended The Bank of New York as indenture trustee and collateral agent for \$800 million of debt against adversary proceeding asserting that prepetition transactions and grant of liens was a fraudulent conveyance.

In re Aralco S.A. (Brazil and Bankr. S.D.N.Y. 2014-15): Represented Deutsche Bank as indenture trustee for \$250 million of US dollar notes governed by a New York law indenture, in recuperação judicial proceedings in Brazil and a related chapter 15 proceeding in New York.

In re OAS, S.A. (Brazil and Bankr. S.D.N.Y. 2015): Represented Deutsche Bank as indenture trustee for \$1.75 billion of U.S. dollar notes governed by a New York law indenture, in recuperação judicial proceedings in Brazil and a related chapter 15 proceeding in New York.

In re Wind Power Energia, S.A. (Brazil 2014-15): Represented Deutsche Bank as indenture trustee for \$ 200 million of US dollar notes governed by a New York law indenture, in recuperação judicial proceedings in Brazil.

In re Algoma (Canada and Bankr. D. Del. 2014): Represented Wilmington Trust Company as indenture trustee for \$400 million of US dollar notes in Canadian arrangement proceedings and chapter 15 proceeding in Delaware.

In re Consolidated Freightways Corporation of Delaware, et al. (Bankr. C.D. Cal. 2004): Represented the indenture trustee for \$15.1 million of municipal bond debt in the Chapter 11 case of the Consolidated Freightways Corporation.

In re Federal Mogul Global Inc. et al. (D. Del. 2006): Represented the indenture trustee for \$2 billion in public debt in Chapter 11 case of Federal Mogul.

In re US Airways (Bankr. D. Va. 2003): Represented trustee in enhanced equipment trust certificate (EETC) structured finance transaction secured by three B757-200 aircraft being operated by debtor; converted interoperating lease structure.

In Re United Airlines (Bankr. D. Ill. 2002): Represented trustee in structured PTC transactions with leveraged lease debt on five widebody aircraft.

In re Trans World Airlines, Inc., et al. (Bankr. Del. 2001): Represented the indenture trustee for public debt secured by aircraft, spare parts, take off and landing slots, gate leases, and ramp equipment, in bankruptcy litigation; engaged in litigation concerning scope and value of collateral; obtained payment in full inclusive of post-petition interest.

Texas Commerce Bank v. Garamendi, Commercial National Bank v. Superior Ct., and In re Executive Life (Cal. App. Ct.): Represent the indenture trustees for nearly \$2 billion in 10 GIC-backed municipal bond issues in adversary and insolvency proceedings in the Executive Life Insurance Company insolvency. In precedent-setting trial and appellate decisions, defeated efforts to void or subordinate the insurance contracts, and recovered more than 100% of the face amount of those investments.

About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with offices around the world, and a particular focus on the technology, energy & natural resources, financial services, real estate & construction, and travel & hospitality sectors. Recognized by legal research firm BTI as one of the top 20 firms for client service, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

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