

# Appeals Court Grants Kelley Drye's Motion for Summary Judgment on Behalf of Client, State Street Bank and Trust Company, in \$90 Million Noteholder Suit

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The New York Appellate Division, First Department, granted Kelley Drye client State Street Bank and Trust Company ("State Street") a major victory in a long-running litigation relating to hundreds of millions of dollars of defaulted notes issued in the late 1990s by one of the largest funeral home companies in North America. Specifically, the First Department dismissed in its entirety the plaintiff note holders' complaint against State Street that sought damages, interest and costs totaling more than \$90 million.

By way of background, in 2002, State Street was sued by forty-four plaintiffs, consisting primarily of investment and distressed debt funds, for alleged breaches of contract and tort duties and violations of the Trust Indenture Act. State Street was an indenture trustee for \$750 million worth of notes issued in 1997 and 1998 by Loewen Group International, Inc. The plaintiffs claimed that State Street, as indenture trustee, had an obligation to ensure the secured status of the notes, and that it had allegedly failed to take certain steps in that regard, causing uncertainty in the secured status of the notes and resulting in a diminution in the value of the notes under the confirmed bankruptcy plan. Plaintiffs alleged that they received tens of millions of dollars less in bankruptcy distributions than they would have received had there been no issue regarding the secured status of the notes.

After substantial discovery, motion and appellate practice (including an earlier appeal to the New York Court of Appeals in which Kelley Drye persuaded the Court of Appeals to reinstate State Street's third-party claims that had been dismissed by the First Department), the plaintiffs and State Street both moved for summary judgment before the trial court. The trial court dismissed plaintiffs' claims against State Street for breach of contract and breach of the Trust Indenture Act, but denied summary judgment on plaintiffs' negligence and breach of fiduciary duty claims, finding that questions of fact existed as to whether State Street had a duty to plaintiffs and whether State Street breached any such duty.

Plaintiffs and State Street each appealed to the Appellate Division, First Department. The First Department dismissed plaintiffs' complaint in its entirety, affirming judgment in State Street's favor on the breach of contract and statutory claims, but reversing the denial of judgment to State Street on the negligence and breach of fiduciary duty claims. The Court found that plaintiffs' contract and statutory claims had been released pursuant to language in the 2002 Loewen bankruptcy plan of reorganization that Kelley Drye had persuaded the bankruptcy court to include in the Plan. The First Department also accepted Kelley Drye's argument that plaintiffs' tort claims should have been

dismissed as well, because they were duplicative of the contract claims.

While the First Department decision is potentially subject to an appeal to the New York Court of Appeals, the decision is a major victory for State Street, individually, and the indenture trustee and banking industry, generally.