

## New York Commercial Division Round-Up Blog

News & Updates on Cases Decided in the Commercial Division of the New York State Supreme Court

Presented By **SheppardMullin**

# Commercial Division Clarifies Limits of Choice of Law Provision in Indentures

*February 13, 2012 by Sarah Aberg*

In the recent matter *Wilmington Trust Natl. Assn. v. Vitro Automotriz*, Index No. 652303/11 (N.Y. Sup. Dec. 5, 2011), Justice Bernard J. Fried of the Commercial Division addressed the obligations of guarantors of indentured notes. Regardless that the issuer of the notes had declared bankruptcy in Mexico, the guarantors, none of whom were co-debtors, were not relieved of their obligations under the notes. Moreover, Justice Fried found that, while the notes and guaranties were governed by New York law, whether they could be ultimately set-aside in a Mexican bankruptcy proceeding was a decision for the Mexican courts, and not one that he could address.

Wilmington Trust National Association (Wilmington) is the successor indenture trustee with respect to certain senior notes issued by non-party Vitro SAB de C.V. (Vitro SAB) that are due February 1, 2012 and February 1, 2017. Vitro SAB is a Mexican holding company and one of Mexico's largest glass manufacturers. The defendants are affiliates and subsidiaries of Vitro SAB, and are guarantors of its obligations under the notes, which were issued pursuant to two indentures. Vitro SAB defaulted on its payment obligations under the notes, totaling over \$1.3 billion.

Vitro SAB filed for bankruptcy in Mexico in December 2010, and commenced a Chapter 15 case in the U.S. Bankruptcy Court in the Southern District of New York in April 2011, which was later transferred to the Northern District of Texas. Over the summer, both the US and Mexican bankruptcy courts issued injunctive relief in favor of Vitro SAB, but denied the same as to the non-debtor defendant guarantors.

Wilmington commenced the instant action on August 17, 2011, alleging breach of contract and seeking a declaratory judgment confirming the defendants' obligations under the indentures, the notes, and the guaranties. The defendants, rather than rebutting Wilmington's interpretation of the guaranties, instead argued that there was a question as to whether Mexican law governed the parties' relationship. Justice Fried rejected this contention, as the indentures at issue explicitly state that New York law would govern, and that the laws of Mexico would not be applicable to the guaranties.