

**Kobre & Kim's Cross-Border
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New York Court Opens Path for Global Bondholders to Bring Unilateral Claims Against Recalcitrant Bond Issuers

The ability of bondholders to sue bond issuers without going through the cumbersome process of instructing a bond trustee has long been in question. However, a ruling in New York obtained by Kobre & Kim has taken the first step in establishing standing, potentially opens a path for global bondholders to speed up creditor response times.

While bondholders can use litigation and winding-up petitions against the issuer or guarantors to enforce their rights, their ability to use those tools without going through the cumbersome intermediary process of instructing a bond trustee has long been in question.

An important ruling in New York court, obtained by Kobre & Kim on behalf of a group of bondholders, took the first step in allowing beneficial owners to sue bond issuers and guarantors directly. With New York law governing a vast amount of emerging market company debt, this development could allow global bondholders to potentially dramatically speed up creditor response times.

The Decision

On March 11, 2024, the New York Supreme Court denied a motion filed by Glory Health and other defendants to dismiss a lawsuit brought by bondholders over the company's default on over US \$334 million in high-yield notes. The defendants had argued that the plaintiffs lacked standing to bring the claims because they were not the trustees or holders of the notes.

However, Justice Cohen sided with BFAM and the other bondholders, represented by Kobre & Kim, who argued that the bondholders had received authorization to bring the lawsuit from Euroclear Bank SA/NV, the clearing system for the notes.

The Implications

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This ruling puts global bondholders squarely in the driver's seat. The decision means that post-maturity, bond investors may no longer need to form groups to act and can make and quickly execute strategic decisions without going through a bond trustee, which may have very different views about the approach.

Bond issuers could see creditors' speed of response to defaults decrease from years in some cases to months or even weeks. Many of the collective action barriers to enforcement could simply disappear, making New York bonds more easily enforceable as a general matter. Given that New York is the global center for emerging marketing company debt, including PRC and Indian companies, the impact of this ruling is quite broad.

In particular, this decision may have implications for the legal options facing creditors of New York-governed bonds issued by other Chinese developers. Many are facing financial distress as Chinese property prices and demand have plummeted. A [similar decision](#) in the British Virgin Islands, handed down in July 2023, means BVI-based issuers can also be targeted, allowing global bondholders to consider a multijurisdictional strategy targeting bond issuers in these key financial centers.

About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct. The firm's team:

- Acts on behalf of creditors to monetize high-value bonds and loans, judgments, and arbitration awards.
- Has extensive experience handling restructuring related disputes and issues on behalf of distressed debt purchasers.
- Is able to act in jurisdictions across North and South America, EMEA, Asia, BVI, and Cayman in cases involving closely coordinated, cross-border proceedings.