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US Bank Must Face \$25M Bond Fraud Claims At Trial

By **Emilie Ruscoe**

Law360 (June 11, 2020, 4:52 PM EDT) -- The U.S. Bank National Association must face a jury in a suit claiming it's responsible for \$25 million in losses for a sham tribal bond offering, a federal judge in South Dakota has said.

U.S. District Judge Lawrence L. Piersol on Wednesday denied the bank's motion for summary judgment, finding that a trial is necessary to consider the allegations presented by the plaintiffs, a group of institutional investors that claim the bank should have recognized a scam they fell victim to.

"Whether there was negligence by USB and whether that negligence proximately caused damages to plaintiffs is for the jury to decide," Judge Piersol said. "Questions of material fact exist on these issues and plaintiffs' negligence claim will be heard by a jury."

The Water Works Board of the City of Birmingham, Washington Suburban Sanitary Commission Employees' Retirement Plan, Atlantic Global Yield Opportunity Fund LP and Atlantic Global Yield Opportunity Master Fund LP **launched their allegations** in August 2017.

The funds claimed that their money was invested by a group of fraudsters in bonds issued in August 2014 and April 2015 by a Native American tribe. Despite inconsistencies in bond documents and payment instructions, U.S. Bank went ahead and cut checks to entities controlled by the fraudsters, breaching its contracts and common law duties, the complaint alleged.

"Rather than fulfilling even the most basic ministerial role in connection with the August 2014 offering, US Bank chose to bury its head in the sand and ignore obvious red flags pointing to something peculiar about where it was being told to send millions of the plaintiffs' dollars," the funds said in their suit.

The bank **sought summary judgment** in December, telling Judge Piersol that the pension fund group was going after the bank's "deep pocket" to recover their lost funds, but the bank shouldn't be held responsible for the losses.

In its summary judgment motion, the bank argued that the funds' negligence and breach-of-contract claims were misdirected. The bank was acting as a trustee and didn't have a legal duty to the pension funds outside of those trustee agreements, the bank said.

In the decision on Wednesday, Judge Piersol also denied a motion to sever the 2014 and 2015 claims, saying that he didn't see that any "prejudice, let alone unfair prejudice, to USB will result by trying the claims in a single trial." The judge also agreed to curtail the testimony of an expert for the plaintiffs.

John Rich, an attorney for the institutional investors, told Law360 on Thursday that, "the plaintiffs are gratified to have the opportunity to present their case to the jury."

A representative for the U.S. Bank National Association declined to comment.

The Water Works Board of the City of Birmingham, the Washington Suburban Sanitary Commission Employees' Retirement Plan, the Atlantic Global Yield Opportunity Master Fund LP and the Atlantic Global Yield Opportunity Fund LP are represented by Patrick T. Dougherty of Dougherty & Dougherty LLP, John G. Rich and Jessica A. Murzyn of Rich Intelisano & Katz LLP and Milton C. Ragsdale of Ragsdale LLC.

The U.S. Bank National Association is represented by Brendan V. Johnson and Timothy W. Billion of Robins Kaplan LLP and William Pentelovitch, Keiko L. Sugisaka, John Duffey, Judah Druck and Justin Rose of Maslon LLP.

The case is The Water Works Board of the City of Birmingham et al. v. U.S. Bank National Association, case number 4:17-cv-04113, in the U.S. District Court for the District of South Dakota.

--Additional reporting by Elise Hansen and Danielle Nichole Smith. Editing by Nicole Bleier.

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