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**Seward & Kissel Obtains a \$100 Million Decision
In our Client's Favor in Action on Completion Guarantee**

NEW YORK, NY (November 3, 2011) --In a lawsuit brought in New York State Supreme Court, New York County relating to a completion guaranty given by Turnberry Residential Partner, L.P. in connection with the Fontainebleau Las Vegas Resort and Casino development, Justice Melvin Schweitzer granted the cross-motion for summary judgment of Wilmington Trust FSB, as successor Administrative Agent and Disbursement Agent, on the grounds that the completion guaranty was effective by its terms. The court further ruled that Wilmington Trust was not only entitled to retain the \$50 million already paid by Turnberry on the completion guaranty, but was also entitled to payment of a further \$50 million demanded but unpaid by Turnberry over the guarantor's objection.

Turnberry moved for summary judgment, arguing that, the purpose of the completion guaranty was frustrated, and should therefore be declared void, because the Fontainebleau project had filed for bankruptcy and would never be completed. Turnberry further argued that the completion guaranty funds could not be used for any purpose under the terms of the Fontainebleau project financing documents because certain banks had terminated their lending commitments.

Seward & Kissel as counsel for Wilmington Trust cross-moved for summary judgment in its favor, arguing that the completion guaranty was not vitiated by the failure of the Fontainebleau project and that the conditions allowing for its use had been satisfied.

Justice Schweitzer agreed with Wilmington Trust's position, holding that the requirement that available funds be "exhausted" before the completion guaranty could be accessed was satisfied when the banks terminated their financing, and that, because the completion guaranty funds were to be used to pay costs for developing and constructing the project, such funds could be used to pay these costs.

Wilmington Trust's litigation team was led by Seward & Kissel LLP attorneys Mark J. Hyland, Jeffrey M. Dine, and Mandy DeRoche. Corporate attorneys Greg B. Cioffi and Jeffrey M. Berman assisted the litigation team.