

April 2, 2015

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CLIENT/MATTER NUMBER
092281-0101

VIA FEDERAL EXPRESS

Honorable William D. Johnston
Lafayette County Circuit Court
Lafayette County Courthouse
626 Main Street
Darlington, Wisconsin 53530-0040

Re: *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation; Dane County Circuit Court Case No. 10 CV 1576*

Dear Judge Johnston:

Pursuant to your direction at the March 31, 2015 hearing in the above-referenced proceeding, enclosed please find a proposed Order Denying Motion Of The Bank Of New York Mellon, N.A., As Trustee, For An Order Allowing Policy Claim.

We have served the proposed order on all parties-in-interest via email and posted a copy on the court-approved website.

Thank you for your attention to this matter.

Very truly yours,

FOLEY & LARDNER LLP



Jeffrey A. Simmons

Enclosure

cc: All Counsel of Record (with enclosure)

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**ORDER DENYING MOTION OF THE BANK OF NEW YORK MELLON, N.A., AS
TRUSTEE, FOR AN ORDER ALLOWING POLICY CLAIM**

This matter came before the Court on proper advance written notice for hearing on the Motion of the Bank of New York Mellon, N.A., as Trustee, for an Order Allowing Policy Claim (the “Motion”). In the Motion, Bank of New York Mellon sought an order allowing its claim of \$306,678.23 on Policy Number AB0562BE (the “Policy”) for the February 25, 2014 distribution date (the “Claim”). The Motion was heard in open court on March 31, 2015. Appearances were noted on the record. All interested parties were afforded the opportunity to appear and be heard on the Motion.

The Court reviewed and considered the briefs and affidavits filed by Bank of New York Mellon and the Rehabilitator and the arguments of their counsel at the hearing. The Court finds that Bank of New York Mellon did not file the Claim before the deadline required by the Plan of Rehabilitation, as Amended, and the Payment Guidelines for Plan of Rehabilitation, as Amended (“Payment Guidelines”), and that the Claim is a Late Claim as defined by the Payment Guidelines. The Court further finds that Bank of New York Mellon did not prove that its failure to file the Claim in a timely manner was the result of excusable neglect as required by the Payment Guidelines. To show excusable neglect, a party bears the burden of proving that its failure to file a proper and timely claim was not solely the result of neglect, carelessness, inattentiveness, inadvertence, or oversight. *See Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 469

n.3 (1982). Bank of New York Mellon failed to present any evidence explaining why it did not file the Claim after it completed its reconciliations for the trust associated with the Policy in April 2014.

The Rehabilitator presented evidence establishing that the deadlines for claims submissions set forth in the Plan of Rehabilitation and the Payment Guidelines are important to the proper administration of the Segregated Account, including the Rehabilitator's semi-annual reconciliation of deferred loss amounts, which is necessary to accurately assess the financial condition of the Segregated Account. The Court further finds that the Special Deputy Commissioner for the Rehabilitation of the Segregated Account properly considered all of the evidence presented by Bank of New York Mellon, provided Bank of New York Mellon with a detailed explanation of why the Rehabilitator denied the Claim, and followed a thorough and rational process in making the decision to deny the Claim.

Accordingly, it is hereby **ORDERED** that:

1. Bank of New York Mellon's Motion is **DENIED**; and
2. The Rehabilitator's decision denying Bank of New York Mellon's claim for \$306,678.23 for the February 25, 2014 distribution date is **AFFIRMED**.

Dated this ____ day of April, 2015.

BY THE COURT:

Honorable William D. Johnston
Lafayette County Circuit Court Judge
Presiding by Judicial Appointment