

# **Bond Case Briefs**

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## **BONDS - PUERTO RICO**

### **Ambac Assurance Corporation v. Bank of New York Mellon**

**United States District Court, D. Puerto Rico - September 24, 2024 - Slip Copy - 2024 WL 4277670**

Ambac Assurance Corporation brought an action seeking to recover damages against Bank of New York Mellon (BNYM) for BNYM's alleged "grossly negligent breach" of its contractual and common-law duties as trustee for certain bonds - insured by Ambac - that were issued by the Puerto Rico Sales Tax Financing Corporation (COFINA).

In essence, Ambac alleged that BNYM's failure to officially declare an Event of Default - although many events of default had in fact occurred - damaged Senior Bondholders and, consequently, Ambac itself.

The COFINA indenture included the release of Ambac's relevant breach of duty claims against BNYM other than those premised on claims of gross negligence, willful misconduct, or intentional fraud.

BNYM argued that Ambac's complaint failed to state gross negligence claims and, therefore, must be dismissed.

The District Court agreed, holding that the COFINA indenture preserved only Ambac's relevant ability to make claims premised on gross negligence, and that Ambac had failed entirely to state such a claim upon which relief may be granted.

While the District Court noted that Ambac had raised potentially colorable claims concerning BNYM's breach of contractual duties, pre- and post- default common law duties, and the covenant of good faith and fair dealing, none of these alleged breaches rose to the level of gross negligence.

"Beyond the ordinary negligence elements, a plaintiff must also allege facts plausibly suggesting that the defendant's conduct evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing."

"Recklessness in the context of a gross negligence claim means an extreme departure from the standards of ordinary care, such that the danger was either known to the defendant or so obvious that the defendant must have been aware of it."

"A claim of gross negligence requires a plaintiff to prove that the defendant failed to exercise even slight care, scant care, or slight diligence, or that the defendant's actions evinced a reckless disregard for the rights of others."

"A mistake or series of mistakes alone, without a showing of recklessness, is insufficient for a finding of gross negligence."

