



Although the SEC filings disclosed the damage from Hurricane Ike and its potential effect on future distributions, they did not disclose that the prospects for the Trust were so bad that BNYM considered resigning. BNYM did not disclose that things were so bad that it also considered calling a vote to terminate the trust and only did not do so because a few beneficiaries allegedly wanted the Trust to continue and it wasn't sure it could get enough beneficiaries to vote. BNYM also did not disclose that it received a report from its engineers indicating that the future net revenues of the trust were **zero**—a report that could have been a basis for terminating the trust without the time and expense of a lawsuit. It didn't disclose that it considered but rejected the only option that had the potential of providing value to the beneficiaries—selling the entire net profits interests in 2009 or 2010. And although it disclosed that it received compensation, it failed to mention that it was paying itself in violation of the trust agreement.

When BNYM finally gets around to addressing these non-disclosures it merely tries to brush them off as “incidental allegations” to support Ad Litem's claims. Trustee's Limitations Response at 15-16. But these are not trivial details that BNYM chose not to disclose. They are material information that would have been important to the AAL Parties (and other beneficiaries) to know in protecting their interests. Sure, any AAL Parties reading the SEC filings would have known that Ike caused damages that could affect potential distributions. But they also were entitled to rely on BNYM—a professional fiduciary—to honor its fiduciary duties, including its duties to act in good faith and to put their interests ahead of its own. They were entitled to rely on BNYM doing its job. Only through discovery in this litigation did Ad Litem learn that BNYM

failed to disclose information that, had the AAL Parties known, they could have taken steps to protect their interests. BNYM knowingly kept the Trust alive so it could keep getting paid when it knew there was no reasonable prospect that the beneficiaries would ever get a dime.

Further, the AAL Parties (and other beneficiaries) were entitled to rely on BNYM to fulfill its fiduciary duties, including its duty of full disclosure. The AAL Parties had no obligation to scour the trust records to make sure that their fiduciary was not withholding important information or making decisions to further its own interests at the expense of the beneficiaries' interests.

BNYM admits that the only disclosures it made to the beneficiaries were those in the SEC filings. The AAL Parties were entitled to rely on those disclosures. Injuries and wrongful acts based on acts and omissions that were not disclosed in the SEC filings were both inherently undiscoverable and not discovered, nor could they have been discovered, as a matter of law. The Court should grant Ad Litem's Limitations MSJ.

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**Attorney Ad Litem**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I conferred with counsel for the Corporate Trustee in an attempt to resolve this dispute without presenting it to the court but was unsuccessful.

/s/Daniel C. Bitting

Daniel C. Bitting

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on counsel of record on March 17, 2017 and will be served in accordance with the Court's orders regarding service dated September 28, 2015 and January 21, 2016.

/s/Daniel C. Bitting

Daniel C. Bitting