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January 7, 2011

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You are hereby notified that the Court has entered the following order:

2010AP2835 Sean Dilweg v. Wells Fargo Bank

Before Vergeront, P.J., Lundsten and Blanchard, JJ.

Respondents Sean Dilweg, the Wisconsin Office of the Commissioner of Insurance (OCI), and Ambac Assurance Corporation have filed companion motions seeking to dismiss the three appeals filed by: (1) Depfa Bank, PLC; (2) One State Street, LLC; and (3) Access to Loans

for Learning Student Loan Corporation and Lloyds RBS Bank, PLC (Lloyds). The respondents contend that the orders appealed from—one of which scheduled a deadline for objections and denied discovery requests, and the other of which denied intervention and relief from a temporary injunction—were not final and appealable. They acknowledge that denials of motions to intervene are generally considered final, but argue that the general rule should not apply in these rehabilitation proceedings because the appellants have still been participating in the underlying proceedings as interested parties. They further accuse the appellants of attempting to obtain bootstrapped review of what would otherwise plainly be nonfinal orders relating to scheduling and discovery by adding requests for interventions to each new motion they file as interested parties. In the alternative, OCI asks that we stay this appeal until after the circuit court has issued a ruling on the proposed segregation plan, since the court conducted a hearing on the matter in November and has indicated that a decision is forthcoming.

In response to the motions to dismiss, each of the appellants points to this court's order dated June 18, 2010, in Appeal Nos. 2010AP1291 and 2010AP2022, in which we concluded that similar orders denying intervention and relief from injunctive relief to other parties were final and appealable. Those appeals are now in the final phases of a briefing schedule. However, Depfa and Lloyds agree with OCI that judicial economy would be served by staying this appeal (as well as Appeal Nos. 2010AP1291 and 2010AP2022) until after the circuit court has ruled on the proposed segregation plan. Meanwhile, One State Street has stipulated that it would be willing to voluntarily dismiss this appeal without prejudice, preserving its objections to the

challenged orders, so long as it could refile after an order on the proposed segregation plan has been entered.[1]

We agree with the appellants that the finality of these orders should be interpreted in the same manner as the orders in Appeal Nos. 2010AP1291 and 2010AP2022. We are also amenable to staying the appeal until after the proposed segregation plan has been ruled upon. However, there have been two developments in the circuit court that further complicate the procedural posture of this case and may undermine the proposal set forth by the parties. It appears from docket entries that on December 9, 2010, the underlying case was removed to federal court, and on December 16, 2010, the circuit court indicated that it did not intend to issue a decision on the proposed segregation plan unless and until the record was remanded to it.

Generally, "plenary state jurisdiction ceases from the time a removal petition is filed in the federal court," after which "the state courts have only such jurisdiction to proceed as is specifically allowed by the federal statutes" until the federal courts deny the petition or remand the case. *See* ***State v. Cegielski***, 124 Wis. 2d 13, 18, 368 N.W.2d 628 (1985). Before we take any action on the pending motions to dismiss the appeal as premature or on alternate proposals to stay the appeal, we would like the parties' views on what, if any, jurisdiction this court currently has over an appeal on the denial of intervention, in light of the removal petition. It would be particularly helpful if the parties could confer and advise this court if they agree on whether we should stay this matter.

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[1] We note that, although a voluntary dismissal does not preclude subsequent appeal, it does not affect or extend the time to appeal, which would continue to run from the original order.

IT IS ORDERED that, within 10 days of this order, the parties shall inform this court—jointly, if they agree, or by individual submissions if they do not—what effect they believe the federal removal petition has upon this appeal.

A. John Voelker
Acting Clerk of Court of Appeals