



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. Box 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

November 12, 2010

To:

Hon. William D. Johnston
Circuit Court Judge
Lafayette County Courthouse
P.O. Box 40
Darlington, WI 53530

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Kristine E. Bailey
John M. Rosenthal
Morgan, Lewis & Bockius LLP
One Market St., Spear Street Tower
San Francisco, CA 94105

James E. Bartzon
Earl H. Munson, Jr.
Boardman, Suhr, Curry & Field LLP
P.O. Box 927
Madison, WI 53701-0927

Anne Bensky
Garvey McNeil & Associates, S.C.
One Odana Court
Madison, WI 53719

Lawrence Bensky
Law Office of Lawrence Bensky, LLC
10 East Doty St., Ste. 800
Madison, WI 53703

Paul E. Benson
Paul A. Lucey
Michael Best & Friedrich LLP
100 E. Wisconsin Ave., Ste. 3300
Milwaukee, WI 53202-4108

Philip Bentley
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Laura E. Callan
Solheim Billing & Grimmer, S.C.
P.O. Box 1644
Madison, WI 53701-1644

David I. Cisar
Susan E. Lovern
von Briesen & Roper, S.C.
Ste. 700
411 E. Wisconsin Ave.
Milwaukee, WI 53202

John C. Frank
Lathrop & Clark
P.O. Box 1507
Madison, WI 53701

James Friedman
Anthony James Gaughan
Brady C. Williamson Jr.
Godfrey & Kahn SC
PO Box 2719
Madison, WI 53701-2719

David M. Greenwald
John B. Simon
Patrick J. Trostle
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654

Stephen P. Hurley
Hurley, Burish & Stanton, S.C.
33 E. Main Street, Suite 400
P. O. Box 1528
Madison, WI 53701-1528

Susan Jacquemot
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Melissa A. Kern
Frost Brown Todd LLC
1103 Boundary Rd.
Middleton, WI 53562

Grant C. Killoran
Gregory W. Lyons
O'Neil Cannon Hollman DeJong & Laing SC
111 E Wisconsin Ave Ste 1400
Milwaukee, WI 53202

Matthew Lynch
Michael B. Van Sicken
Foley & Lardner LLP
150 E. Gilman St.
P.O. Box 1497
Madison, WI 53701-1497

Nathan Moenk
Michael Best & Friedrich LLP
P. O. Box 1806
Madison, WI 53701

Stephen L. Morgan
Murphy & Desmond, SC
P.O. Box 2038
Madison, WI 53701-2038

R. Timothy Muth
Reinhart Boerner Van Dueren SC
1000 N. Water St.
P.O. Box 2965
Milwaukee, WI 53201-2965

Noreen J. Parrett
Parrett & O'Connell, LLP
10 E. Doty St., Ste. 621
Madison, WI 53703

Bryan K. Nowicki
Jessica Hutson Polakowski
Reinhart Boerner Van Dueren, S.C.
22 E. Mifflin St., Ste. 600
Madison, WI 53703

Daniel W. Stolper
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

Christopher J. Stroebel
von Briesen & Roper SC
Suite 1000
3 S Pinckney St
Madison, WI 53703

Steven T. Whitmer
Kevin A. Wisniewski
Lock, Lord, Bissell & Liddell LLP
111 South Wacker Drive
Chicago, IL 60606

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

2010AP2721-LV

Sean Dilweg v. Access to Loans for Learning Student Loan
Corporation (L.C. #2010CV1576)

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

Access to Loans for Learning Student Loan Corp. and Lloyds TBS Bank PLC (collectively, Lloyds) petition for leave to appeal: (1) a scheduling order, dated October 20, 2010, that denied their requests for discovery and set a date for a confirmation hearing on the rehabilitation plan in this matter; and (2) any nonfinal aspects of an order dated October 26, 2010, that ruled on a legal challenge to the establishment of the segregated account which is the subject of the rehabilitation proceeding, denied various requests for injunctive relief, and refused to allow several interested parties to intervene.¹ Lloyds also asks us to stay the scheduled hearing. The Wisconsin Office of the Commissioner of Insurance and the Ambac Assurance Company oppose the petition and stay request.

Interlocutory review is disfavored in this state. *State ex rel. A.E. v. Circuit Court for Green Lake County*, 94 Wis. 2d 98, 102, 288 N.W.2d 125 (1980). While we have discretion to review an order not appealable as of right when an appeal would materially advance the termination of the litigation or clarify further proceedings, protect the petitioner from substantial or irreparable injury, or clarify an issue of general importance in the administration of justice, we will not grant leave to appeal absent compelling circumstances. See WIS. STAT. § 808.03(2) (2007-08). *Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis. 2d 265, 268, 569 N.W.2d 45 (Ct. App. 1997). This policy “is designed to protect pretrial and trial court proceedings from the interruptions and delays caused by multiple appeals, and to limit each case to a single appeal” under ordinary circumstances. *Id.* The petitioner must demonstrate both that there is a substantial likelihood of success on appeal, and that the necessity of immediate review

¹ We do not decide here whether the order may be final and appealable as to those parties who were denied the right to intervene. That decision will be made in response to any notices of appeal which are filed.

outweighs our general policy against the piecemeal disposition of litigation. *Id.* at 268 n.2; *State v. Salmon*, 163 Wis. 2d 369, 374-75, 471 N.W.2d 286 (Ct. App. 1991).

Lloyds complains that it is inefficient and fundamentally unfair that the matter has been scheduled for trial without first permitting discovery, and it asserts that no hearing would even be necessary if this court were to agree with its position that the segregated account which is the subject of the proceeding was improperly created. The commissioner and Ambac respond that rehabilitation proceedings under Chapter 645 are not designed as an adversarial process and the trial court therefore properly refused to grant individual discovery rights to every policy holder and/or insurer that had some interest in the outcome. They also point out that Lloyds failed to direct its request for a stay to the trial court first.

Having considered the arguments of both the petitioner and the respondent, we conclude that there are no sufficiently compelling reasons to warrant interlocutory review here. The issues presented will be fully preserved, and their factual context better developed, following the hearing.

IT IS ORDERED that the petition for leave to appeal and motion for a stay are denied.

A. John Voelker
Acting Clerk of Court of Appeals