

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

GEORGE D. DERNIS, as an individual, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FEDERAL DEPOSIT INSURANCE )  
 CORPORATION, AS RECEIVER FOR )  
 PREMIER BANK, DR. ZULFIKAR ESMAIL, )  
 SHAMIM ESMAIL, ALIYA HUSSAINI, )  
 ALIYA HUSSAINI 2006 IRREVOCABLE )  
 TRUST, KASSIM ESMAIL, KASSIM )  
 ESMAIL 2006 IRREVOCABLE TRUST, )  
 AMYNA ESMAIL, AMYNA ESMAIL 2006 )  
 IRREVOCABLE TRUST, )  
 )  
 Defendants. )  
 )

Case No. 12-cv-02856

Judge Gary Feinerman

**GEORGE DERNIS' RESPONSE TO THE  
FDIC'S MOTION TO STAY PROCEEDINGS**

George D. Dernis ("Mr. Dernis"), by and through his attorneys, respectfully submits this Response to the FDIC's Motion to Stay Proceedings. The FDIC's motion to stay is premature and should be continued, or otherwise limited, as set forth in this Response because the FDIC now has created a checkerboard of litigation, which it should not be able to play to an unfair advantage. Mr. Dernis and the FDIC have various claims pending against each other, all related to a scheme perpetrated by the FDIC's predecessor, Premier Bank, against Mr. Dernis and his companies. Those claims should be adjudicated in an efficient manner and in the interests of justice, and it is likely that a consolidation will occur as the claims in all three cases involve common questions of fact and law.

## **BACKGROUND**

This action was commenced in Illinois state court on March 14, 2012, when Mr. Dernis filed his complaint against Premier Bank and the individual defendants in the Circuit Court of Cook County, Chancery Division, as Case Number 2012 CH 09161. The complaint seeks relief against Premier Bank based on allegations of Premier's scheme of self-dealing, fraud and financial manipulation designed to divert assets from Mr. Dernis and his companies to Premier Bank and the other defendants.

Premier Bank had filed two separate complaints against Mr. Dernis in the Circuit Court of Cook County, Law Division, as Case Numbers 2012 L 949 and 2012 L 950. Together, those complaints allege that Mr. Dernis breached six separate personal guaranty agreements and one promissory note. Mr. Dernis contends that those six personal guarantees and promissory note were executed as part of the bank's overall fraudulent scheme and are invalid and unenforceable.

On March 23, 2012, Premier Bank was closed by the Illinois Department of Financial and Professional Regulation, Division of Banking, for "conducting its business in an unsafe and unsound manner." On the same day, the FDIC was appointed as receiver of the bank. Since its appointment, the FDIC has substituted itself as the named party in place of Premier Bank in all three of the cases mentioned above. The FDIC subsequently removed all three actions from state court to federal court. The FDIC has not yet taken any action to consolidate these cases. If the FDIC does not move or agree to consolidate, then Mr. Dernis intends to do so promptly.

On April 17, 2012, the FDIC filed its Notice of Removal in order to remove George Dernis v. FDIC, as Receiver for Premier Bank, et al., Case No. 2012 CH 09161, from the Circuit Court of Cook County, Chancery Division to the United States District for the Northern District

of Illinois, Eastern Division. On April 18, 2012, the case was assigned to this Court and given its new case number, 12-cv-02856.

On April 23, 2012, the FDIC moved to stay only this case—the only matter in which the FDIC is a defendant—pending the exhaustion of the administrative review claims process specified in The Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”).

On April 26, 2012, the FDIC filed its Notice of Removal in order to remove Premier Bank v. George Dernis, et al., Case 2012 L 950 from the Circuit Court of Cook County, Law Division to the United States District for the Northern District of Illinois, Eastern Division. On the same day, the case was assigned to Judge George W. Lindberg and given its new case number, 12-cv-03100. Judge Lindberg has set an initial status hearing for May 30, 2012.

On May 3, 2012, the FDIC filed its Notice of Removal in order to remove Premier Bank v. George Dernis, Case 2012 L 949 from the Circuit Court of Cook County, Law Division to the United States District for the Northern District of Illinois, Eastern Division. On the same day, the case was assigned to Judge Suzanne B. Conlon and given its new case number, 12-cv-03379. Judge Conlon has set an initial status hearing for June 5, 2012.

### **ARGUMENT**

Under FIRREA, creditors, like Mr. Dernis, have ninety (90) days to present their claims to the receiver after receiving notice of the closed depository institution. 12 U.S.C. § 1821(d)(3)(B)(i). After a claim is presented, the FDIC has 180 days to make a determination as to whether the claim will be allowed or disallowed. 12 U.S.C. § 1821(d)(5)(A)(i). FIRREA provides for the stay of judicial actions or proceedings under Section 1821(d)(12) as follows: “After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed— (i) 45 days, in the case of

any conservator; and (ii) 90 days, in the case of any receiver, in any judicial action or proceeding to which such institution is or becomes a party.”

In its motion, the FDIC seeks to stay this matter for either the entire time period that it may take the FDIC to make a determination on Mr. Dernis’ claims, or for the entire 180 days allotted for the process, whichever occurs first. Mr. Dernis does not dispute that the FDIC may be entitled to the issuance of a stay in this matter. However, Mr. Dernis objects to the premature timing of the FDIC’s motion, as well as the length of time requested by the FDIC for the stay—to the extent the stay is limited to this litigation alone.

The FDIC’s motion to stay the instant litigation is premature and it should not be granted for two reasons. First, because all three actions arise out of the same set of facts and involve common questions of law, the cases should be consolidated before the same court. That court should decide the FDIC’s motion to stay.

Second, granting a stay at this time would not be economical or in the interests of justice. Significantly, Mr. Dernis has incorporated the allegations from his complaint against the FDIC as part of his defenses to the FDIC’s two complaints against him. Thus, if the other two cases—Case Nos. 12-cv-03100 and 12-cv-03379—are allowed to proceed against Mr. Dernis, it is inevitable that the same claims and defenses will be presented at least three separate times in three separate venues. Thus, a stay of this case alone would not preserve resources.

Notably, federal courts have held that the very FIRREA administrative claims review process (“ACRP”) the FDIC seeks to invoke was created to make the dispute process more efficient: “Quite simply, Congress intended the ACRP to provide a streamlined method for resolving most claims against failed institutions in a prompt, orderly fashion, without lengthy litigation.” *Marquis v. FDIC*, 965 F.2d 1148, 1152 (1st Cir. 1992). Indeed, the goals of

FIRREA include “fairness to claimants, minimization of expense, and thoughtful husbanding of scarce judicial resources.” *Id.* at 1154.

A one-way stay merely would prevent Mr. Dernis from pursuing his claims against the FDIC in the one case where the FDIC is a defendant, while the FDIC would be allowed to continue to pursue its claims against Mr. Dernis on the other two related cases where the FDIC is the plaintiff. The stay provision of Section 1821(d)(12) applies equally to cases in which the FDIC is a plaintiff just the same as it applies to cases where FDIC is a defendant. *Marquis*, 965 F.2d at 1153.

If, however, the Court determines that a stay is required at this point in time, Mr. Dernis objects to the FDIC’s request for a stay that exceeds the 90-day time period provided by the statute. *See* 12 U.S.C. § 1821(d)(12). The statute provides that a receiver “may request a stay for a period not to exceed— . . . (ii) 90 days, in the case of any receiver, in any judicial action or proceeding to which such institution is or becomes a party.” 12 U.S.C. § 1821(d)(12)(A)(ii).<sup>1</sup>

### **CONCLUSION**

Mr. Dernis respectfully asks the Court to enter and continue the FDIC’s motion to stay for a brief period of time, so that this matter and its related matters go forward efficiently and in the interests of justice. Alternatively, in the event that the motion to stay is granted, Mr. Dernis respectfully asks that the Court limit the stay to the 90-day time period pursuant to Section 1821(d)(12)(A)(ii).

---

<sup>1</sup> While Mr. Dernis acknowledges that certain district courts, including courts within this district, have found that the statutory language of Section 1821(d)(12) does not prevent a court from granting stays that extend beyond the designated 90-day time period, under the present circumstances for the reasons described herein, granting the FDIC a stay beyond 90 days would cause unnecessary prejudice to Mr. Dernis.

Dated: May 8, 2012

Respectfully submitted,

GEORGE DERNIS

By: /s/ Andrew W. Vail  
One of His Attorneys

Andrew W. Vail (6279951)  
Andrew D. Hoeg (6280225)  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654-3456  
Telephone: 312 222-9350  
Facsimile: 312 527-0484