

Motion had been resolved and the FDIC-R's time to respond to the complaint in that action was extended until 21 days after the entry of an order deciding the Reference Withdrawal Motion.

5. On May 5, 2011, the Trustee filed his *Objection/Resistance to Motion for Withdrawal of Reference of this Proceeding to the Bankruptcy Court*, and on May 19, 2011, the FDIC-R filed its *Reply Brief of the Federal Deposit Insurance Corporation, as Receiver for TierOne Bank, in Support of its Motion to Withdraw the Reference of this Adversary Proceeding to the Bankruptcy Court*. See Adv. Proc. Doc. Nos. 18 & 27.

6. On May 27, 2011, the Honorable Chief Judge Thomas L. Saladino of the Bankruptcy Court filed his Report & Recommendation with the Bankruptcy Court, wherein he recommends to the United States District Court for the District of Nebraska (the "Nebraska District Court") that the Reference Withdrawal Motion be granted and the Adversary Proceeding be transferred to the D.C. District Court. See Adv. Proc. Doc. No. 30-31 (hereinafter the "Report and Recommendation").

7. While reserving all of their other rights and defenses and without regard to the merits of the Reference Withdrawal Motion and without adoption by this Court of all or any part of the Report and Recommendation, the parties seek to resolve any further litigation over the Reference Withdrawal Motion and any subsequent venue transfer motion that the FDIC-R might file in the above-captioned case and respectfully agree as follows:

- (i) That the reference of the Adversary Proceeding be withdrawn and that the Adversary Proceeding be transferred by the Nebraska District Court to the D.C. District Court; and
- (ii) That the time for the FDIC-R to answer, move or otherwise respond to the complaint in the Adversary Proceeding is extended through and including the date that is 21 days after the D.C. District Court enters this transferred action on its docket.

8. In addition, the Trustee and the FDIC-R stipulate that no party shall be bound in any litigation between them by the Bankruptcy Court's statement in the Report and Recommendation that: "The 2008 tax refund is in the receiver's possession." No evidence was presented by either party in connection with the motion to withdraw reference and this is a fact that remains in dispute between the parties.

NOW, THEREFORE, pursuant to the stipulation of the Trustee and the FDIC-R, and the Nebraska District Court otherwise sufficiently advised, the Nebraska District Court hereby finds and orders as follows:

1. Withdrawal of the reference of the Adversary Proceeding is hereby ordered.
2. Good cause exists to transfer the Adversary Proceeding to the D.C. District Court, where the FIRREA Lawsuit is pending. Pursuant to 28 U.S.C. § 1404(a), the Adversary Proceeding is hereby ordered to be transferred to the D.C. District Court.
3. The time for the FDIC-R to answer, move or otherwise respond to the complaint in the Adversary Proceeding is extended through and including the date that is 21 days after the D.C. District Court enters this transferred action on its docket.

SO ORDERED THIS 6th day of June, 2011.

sl Richard G. Kopf

The Honorable Judge Richard G. Kopf

STIPULATED AND AGREED TO BY:

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