

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MICHAEL SYKES, individually and)
 derivatively on behalf of Wheatland Bank,)
 Inc.,)
)
 Plaintiff,)
)
 v.)
)
L. MARK SPANGLER, et al.,)
)
 Defendants,)
)
 and **FEDERAL DEPOSIT INSURANCE**)
CORPORATION AS RECEIVER FOR)
WHEATLAND BANK,)
)
 Nominal Defendant.)

Case No. 10-CV-04288

**NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF ILLINOIS**

To: The Judges of the United States District Court for the Northern District of Illinois
The Clerk of the Above-Entitled Court

PLEASE TAKE NOTICE THAT Nominal Defendant, the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for Wheatland Bank, by its counsel, hereby gives Notice pursuant to 28 U.S.C. § 1441(b) and 12 U.S.C. § 1819(b)(2)(B) of the removal of the case styled *Michael Sykes, individually and derivatively on behalf of Wheatland Bank, Inc. v. L. Mark Spangler, Norm Beles, Frank Laskaris, and E. James Adcock*, Case No. 10 L 5634, from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois. The FDIC removes this lawsuit on the grounds that the recent substitution of the FDIC as Receiver for Wheatland Bank as a party mandates the removal of all claims pending against it. In support of its motion, the FDIC states as follows:

BACKGROUND

1. On or about May 12, 2010, Plaintiff Michael Sykes (“Sykes”) filed a complaint, individually and derivatively on behalf of Wheatland Bank, against Defendants L. Mark Spangler, Norm Beles, Frank Laskaris, and E. James Adcock (collectively, “Defendants”), in Case No. 10 L 5634, in the Circuit Court of Cook County, County Department, Law Division (the “State Court Action”). The complaint also named Wheatland Bank as a “Nominal Defendant.” A copy of the complaint filed in the State Court Action is attached as Exhibit A.

2. In the State Court Action, Sykes asserts derivative claims on behalf of Wheatland Bank and, purportedly, individual claims against the Defendants, who were board members of Wheatland Bank, for breach of fiduciary duty (Count I), gross mismanagement and breach of fiduciary duty (Count II), waste of corporate assets (Count III), and negligence (Count IV).

3. Defendants have filed an appearance in the State Court Action, but have not yet answered the complaint. Defendants’ responsive pleading to the complaint is due July 30, 2010. A copy of Defendants’ appearance, motion to vacate any technical defaults, and a Court order setting the responsive pleading date are attached as Exhibit B.

4. On April 23, 2010, the Illinois Department of Financial and Professional Regulation (“IDFPR”) took possession and control of Wheatland Bank and requested that the FDIC accept appointment as Receiver for Wheatland Bank. A copy of the IDFPR’s request to the FDIC is attached as Exhibit C.

5. On April 23, 2010, the FDIC accepted its appointment as Receiver for Wheatland Bank. A copy of the FDIC’s acceptance letter is attached as Exhibit D.

6. The FDIC as Receiver for Wheatland Bank has succeeded to all rights, titles, powers, and privileges of Wheatland Bank pursuant to 12 U.S.C. § 1821(d)(2)(A)(i).

7. On or about July 1, 2010, the FDIC as Receiver for Wheatland Bank was substituted as the Nominal Defendant in the State Court Action. A copy of the Motion to Substitute is attached as Exhibit E, and a copy of the order reflecting the substitution of the FDIC as a party to the State Court Action is attached as Exhibit F.

BASIS FOR REMOVAL

8. This notice of removal is brought in part pursuant to 28 U.S.C. § 1441(b), which provides, in relevant part, that “[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties, or laws of the United States shall be removable without regard to the citizenship or residence of the parties.”

9. Any civil suit in which the FDIC, in any capacity, is a party is “deemed to arise under the laws of the United States.” 12 U.S.C. § 1819(b)(2)(A). *See also Bullion Servs., Inc. v. Valley State Bank*, 50 F.3d 705, 707 (9th Cir. 1995). When the FDIC is a party, the entire action is deemed to arise under the laws of the United States. *Buchner v. FDIC*, 981 F.2d 816, 818-19 (5th Cir. 1993).

10. The FDIC also has a statutory right to remove cases in which it is a party from state court to federal court pursuant to the Financial Institution Reform, Recovery, and Enforcement Act of 1989. Specifically, 12 U.S.C. § 1819(b)(2)(B) provides:

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.¹

¹ Subparagraph (D) provides an exception for cases meeting each of the following requirements: (1) the FDIC “is a party other than as plaintiff,” (2) the case involves “only” obligations “owing to, depositors, creditors, or stockholders by the” institution or pre-closing rights against the institution, and (3) the case involves only the interpretation of state law. 12 U.S.C. § 1819(b)(2)(D).

11. This notice of removal is being brought within the 90-day period from the date the FDIC as Receiver for Wheatland Bank was substituted as a party in the State Court Action.

12. The exception set forth in Subparagraph (D) does not apply because the case does not involve Wheatland Bank's obligations to depositors, creditors, or stockholders. Rather, the derivative claims Sykes purports to assert involve the named defendants' obligations to Wheatland Bank in their capacities as directors. A separate reason is that while the FDIC as Receiver for Wheatland Bank is named as "Nominal Defendant," the case involves derivative claims brought on behalf of Wheatland, making it analogous to a plaintiff.

13. Because the FDIC as Receiver for Wheatland Bank is now a party to the State Court Action, the entire State Court Action should be removed to the United States District Court for the Northern District of Illinois.

14. The FDIC as Receiver for Wheatland Bank has promptly served notice of the filing of this removal to all parties of record in the State Court Action, and to the Clerk of the Circuit Court of Cook County, Illinois, pursuant to 28 U.S.C. § 1446(d).

15. Venue properly lies with this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), as this action is presently proceeding in the Circuit Court of Cook County, Illinois.

16. Copies of all process, pleadings, and orders served by or on the FDIC as Receiver for Wheatland Bank are attached to this notice of removal as required by 28 U.S.C. § 1446(a).

WHEREFORE, the FDIC as Receiver for Wheatland Bank respectfully requests that this Court accept the removal of this action from state court and direct that the Circuit Court of Cook County shall have no further jurisdiction over this matter.

Dated: July 9, 2010

Respectfully submitted,

/s/ Lisa C. Sullivan

One of the Attorneys for the Federal Deposit
Insurance Corporation as Receiver for Wheatland
Bank

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CERTIFICATE OF SERVICE

I, Lisa C. Sullivan, an attorney, certify that on July 9, 2010, I caused a true and correct copy of **Notice of Removal to the United States District Court for the Northern District of Illinois** to be served on the counsel listed below by first class U.S. mail, postage prepaid, by depositing envelopes containing same into the mailbox located outside 3500 Three First National Plaza, Chicago, Illinois 60602 before 7:00 p.m.:

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/s/ Lisa C. Sullivan