

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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**WELLS FARGO BANK, N.A.,  
as Trustee,**

Plaintiff,

**Case No. 09-CV-768**

**-vs-**

**LAKE OF THE TORCHES ECONOMIC  
DEVELOPMENT CORPORATION,**

Defendant.

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**DECISION AND ORDER**

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On March 30, 2012, the Court issued an order directing the plaintiff, Wells Fargo Bank, N.A., to file a complaint that “complies with the mandate of the Seventh Circuit,” and also to show cause as to why Wells Fargo and its counsel should not be sanctioned for its failure to do the same. In response, Wells Fargo and the bondholders who were attempting to join this lawsuit filed a notice of voluntary dismissal and re-filed a separate lawsuit. Case No. 12-cv-255-wmc (W.D. Wis.)

On appeal, the Seventh Circuit upheld this Court’s ruling that the Trust Indenture is void because it is an unapproved management contract within the meaning of the Indian Gaming Regulation Act. As explained by the Seventh Circuit, once the Indenture is voided,

the standing of Wells Fargo to seek the return of the funds to the bondholder is not self-evident. Lake of the Torches contested Wells Fargo’s standing in its briefing before the district court, and Wells Fargo responded that the failure of an express trust results in a constructive trust in favor of the beneficiary that preserves the trustee’s standing to litigate on behalf of the beneficiary. However,

the issue was not explored fully by either party, and it deserves more comprehensive consideration on remand.

In sum, on remand, the district court should grant Wells Fargo's motion for leave to file an amended complaint insofar as it states claims for legal and equitable relief in connection with the bond transaction. The court should then address whether Wells Fargo's standing to seek such relief on behalf of the bondholder survives the voiding of the Indenture. It should proceed to address whether the transactional documents, taken alone or together, evince an intent on the part of the Corporation to waive sovereign immunity with respect to claims by Wells Fargo on its own behalf and, if it has standing to do so, on behalf of the bondholder.

*Wells Fargo v. Lake of the Torches*, 658 F.3d 684, 701-02 (7th Cir. 2011). This language suggests, as the Court explained, that after remand, this matter should proceed on the basis of a pleading brought by Wells Fargo (only) against the Corporation (only), without the joinder of collateral parties.

However, "the scope of the remand is determined not by formula, but by inference from the opinion as a whole." *United States v. Parker*, 101 F.3d 527, 528 (7th Cir. 1996). Once the Trust Indenture was invalidated, this matter shifted from claims based on the indenture to claims based on the bonds themselves. The Seventh Circuit's decision does not necessarily preclude the joinder of the bondholders, even if such joinder could destroy subject matter jurisdiction. This may seem counterintuitive given the specific directive from the Seventh Circuit, but the Seventh Circuit recognized that standing was an issue, and joining the bondholders appears to solve that problem. At minimum, the Court is persuaded that the attempt to amend the pleadings in a manner that may have destroyed subject matter jurisdiction was not sanctionable conduct.

The Court also notes that even if it were inclined to impose sanctions, dismissal with prejudice is now precluded because the notice of dismissal was filed before the defendant filed an answer or motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i); *Nelson v. Napolitano*, 657 F.3d 586, 587 (7th Cir. 2011); *Am. Soccer Co., Inc. v. Score First Enters.*, 187 F.3d 1108, 1110 (9th Cir. 1999).

Therefore, **IT IS HEREBY ORDERED THAT** defendant's motion for contempt and sanctions [ECF No. 124] is **DENIED**. The Clerk of Court is directed to enter plaintiff's voluntary dismissal on the docket.

Dated at Milwaukee, Wisconsin, this 27th day of June, 2012.

**BY THE COURT:**

  
HON. RUDOLPH T. RANDA  
U.S. District Judge