

**Tax Division**

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5-86-2961  
CMN 2011100390

August 9, 2011

Gino J. Agnello, Esquire  
Clerk, U.S. Court of Appeals  
for the Seventh Circuit  
Via CM/ECF

Re: Theodore Nickel v. United States  
(7th Cir. – No. 11-1158)

Dear Mr. Agnello:

We have received the reply of Wisconsin Insurance Commissioner Theodore Nickel (the appellee) to our Rule 28(j) letter. The reply also invites the Court's attention to *Empress Casino Joliet Corp. v. Balmoral Racing Club*, \_\_ F.3d \_\_, 2011 WL 2652201 (7th Cir. 2011). Nickel acknowledges that *Empress Casino* construes a statute not at issue in this appeal, the Tax Injunction Act (28 U.S.C. § 1341), which forbids federal district courts from interfering with the collection of state taxes. Instead, Nickel cites *Empress Casino* for the proposition that jurisdictional rules are best applied mechanically, rather than through complex, multifactor tests.

Nickel's argument fails for want of a valid premise. The United States is not seeking a complex test regarding the interaction of 28 U.S.C. §§ 1442(a)(1) and 1447(d). Instead, our position is that when the Federal Government removes a case under 28 U.S.C. § 1442(a)(1), a district court cannot thereafter lack jurisdiction as that term is used in 28 U.S.C. § 1447(d), rendering inapplicable the appeal prohibition of § 1447(d). That assertion is applicable only to a single statute (§ 1442(a)(1)) amended in 1996 to grant jurisdiction over removals by a unique entity — the Federal Government. There is no chance that this self-limiting proposition will complicate removal jurisprudence for other litigants. Indeed, the United States' position can be reduced to a simple, bright-line rule. The Federal Government can always seek appellate review of remands of § 1442(a)(1) removals.

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Also worth noting is *Empress Casino's* discussion (at \*2) of the importance of not allowing one sovereign to meddle in the tax-collection activities of another sovereign. Whereas Congress enacted § 1341 to deprive federal courts of jurisdiction to meddle in state affairs, it amended § 1442(a)(1) in 1996 to grant the district courts jurisdiction over federal removals as a safeguard against a state meddling in federal affairs. These considerations support the United States' position that federal tax-collection issues should be determined by the federal courts.

Sincerely yours,

/s/ Anthony T. Sheehan

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### CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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