

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2259

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK
CORPORATION,**

PLAINTIFF,

V.

**JAMES WILSON ASSOCIATES, A WISCONSIN LIMITED
PARTNERSHIP,**

**DEFENDANT-RESPONDENT-CROSS-
APPELLANT,**

FIRST NATIONWIDE BANK, A FEDERAL SAVINGS BANK,

**DEFENDANT-APPELLANT-CROSS-
RESPONDENT,**

**DARRELL R. WILD AND KEY PERSONNEL, INC., A
WISCONSIN CORPORATION,**

**DEFENDANTS-RESPONDENTS-CROSS-
APPELLANTS,**

**FIRST NATIONAL BANK OF PORTAGE, A WISCONSIN
BANKING CORPORATION, BANK OF SUN PRAIRIE, A**

**WISCONSIN BANKING CORPORATION, JWP INVESTORS, A
WISCONSIN GENERAL PARTNERSHIP, JOHN C.
KIRKPATRICK, ASHOK KUMAR, ALAN W. BABCOCK,
THOMAS C. LALLY, ROBERT W. EDLUND, FIAZ A.
CHOUDRI,**

DEFENDANTS,

BRUCE G. FELLAND,

DEFENDANT-RESPONDENT,

**CAPITAL INDEMNITY CORPORATION, A WISCONSIN
CORPORATION,**

DEFENDANT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Dane County: ROBERT R. PEKOWSKY, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. First Nationwide Bank (First Nationwide) appeals an order distributing a forfeited bid deposit from a foreclosure sale. James Wilson Associates (JWA), Darrell R. Wild and Key Personnel, Inc., cross-appeal the same order. We reverse on the appeal and affirm on the cross-appeal.

¶2 First Nationwide foreclosed on JWA's property. At the first foreclosure sale, Capital Indemnity Corporation made the high bid and deposited \$250,000. It subsequently withdrew its bid and, over First Nationwide's objection, received a refund of most of the deposit.

¶3 First Nationwide appealed the refund order. This court held that the trial court erred by awarding Capital Indemnity its deposit. *Metropolitan Life Ins. Co. v. James Wilson Assoc., et al.*, No. 96-2838, unpublished slip op. at 6 (Wis. Ct. App. May 21, 1998). The decision further stated that “Nationwide is entitled to a remedy. An order awarding it the balance of the deposit is the appropriate remedy under the circumstances, and is also consistent with the legislative intent in WIS. STAT. § 846.17 (1997-98)¹....” *Id.* at 7. We then remanded the case for entry of an order consistent with our decision.

¶4 On remand, JWA moved for a share of the deposit. The court granted the motion, and JWA received 56% of the deposit balance, First Nationwide 41%, and Bruce Felland, another JWA creditor, 3%. The court treated the portion of our decision quoted above as dicta, and therefore disregarded it. On appeal, First Nationwide contends that our decision left the trial court no choice but to award it the entire deposit balance. On cross-appeal, JWA contends that First Nationwide forfeited its claim to any share of the deposit when it waived its right to a deficiency judgment against JWA after the second foreclosure sale.

¶5 Under our prior decision, First Nationwide is entitled to the entire deposit balance. Our determination of the appropriate remedy on remand was an express decision on the issue, and therefore a mandate to the trial court. “It is axiomatic that ‘a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.’” *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 261, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted). Additionally,

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

awarding First Nationwide the entire deposit is the only outcome consistent with the controlling statute, WIS. STAT. § 846.17, as we noted in the prior appeal.

¶6 First Nationwide did not waive its claim to the deposit. The trial court rightly considered the deposit a proceed of the sale. First Nationwide's decision to waive the deficiency judgment in no way operated to reduce or eliminate its right to these sale proceeds. Therefore, we remand to the circuit court for entry of an order awarding the entire amount of the forfeited bid deposit, plus accrued interest, to First Nationwide.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

