

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

TRI-STATE TRUCK INSURANCE, LTD.,  
TST, LTD., and ANDREW B. AUDET,

Plaintiffs,

v.

No. 09-4158-SAC

FIRST NATIONAL BANK OF WAMEGO, *et al*,

Defendants.

MEMORANDUM AND ORDER

This case is a declaratory judgment action. This Court has recently received the mandate from the Tenth Circuit affirming summary judgment in favor of Tri-State on Loan #5484, and reversing summary judgment on Loan #5483. The Tenth Circuit essentially ruled as follows: that Tri-State cannot prevail on its declaratory judgment action; that the Pennsylvania judgment rescinding the underlying contract does not preclude Wamego's counterclaim based on that contract; that Wamego has standing to pursue its counterclaim regarding Loan #5483 as an intended beneficiary of the addendum to the rescinded contract; and that Wamego may enforce Tri-State's obligations under Loan #5483 irrespective of any personal claims or defenses that Tri-State may have had against Aleritas.

The Tenth Circuit's order does not resolve, and the parties have not fully addressed, all underlying issues relating to Wamego's counterclaim. These include whether Wamego has established the elements of breach of contract as to Loan #5483, and what amount of damages Tri-State owes to Wamego. Accordingly, the Court orders the parties to comply with the following briefing schedule to address those issues and any others the parties demonstrate are included in the pretrial order and remain unresolved:

- Wamego may file a supplemental summary judgment memorandum no later than October 8, 2013;
- Tri-State may respond within 21 days of the service of the memorandum;
- Wamego may reply within 14 days of the service of the response.

The Court anticipates that all issues in this case can be resolved in this manner and that no trial to the Court or other hearing will be necessary.

IT IS SO ORDERED.

Dated this 24th day of September, 2013, at Topeka, Kansas.

s/ Sam A. Crow  
Sam A. Crow, U.S. District Senior Judge