

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

**Conagra Foods, Inc. f/k/a
Conagra, Inc. et al.,**

Plaintiffs,

v.

Case No. 13-2064-JWL

Americold Logistics, LLC et al.,

Defendants.

MEMORANDUM & ORDER

In October 2013, the court granted summary judgment in favor of defendants on plaintiffs' claims. ConAgra and swift-Eckrich filed a timely merits appeal with the Tenth Circuit. Concluding *sua sponte* that this court lacked subject matter jurisdiction over the case, the Tenth Circuit issued an order remanding the matter to this court to vacate its judgment on the merits. *Conagra Foods, Inc. v. Americold Logistics, LLC*, 776 F.3d 1175 (10th Cir. 2015).

This matter is now before the court on plaintiffs Kraft Foodservice, Inc. and Safeway, Inc.'s motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(4). In support of the motion, plaintiffs rely exclusively on the Tenth Circuit's decision finding that this court lacked jurisdiction to enter the judgment such that the judgment is void. While plaintiffs direct the court to the Tenth Circuit's mandate, no mandate has yet issued. In fact, the Conagra entities have filed a petition for certiorari and, on that basis, the Tenth Circuit has expressly stayed issuance of the mandate until the Supreme Court's final disposition on the petition for certiorari. Because the court, then, lacks jurisdiction over this case, it must dismiss plaintiffs'

motion for relief from judgment. *See United States v. Williams*, 790 F.3d 1059, 1086 (10th Cir. 2015) (Circuit transfers jurisdiction back to district court by issuing a mandate); *Hutchinson v. Beckworth*, 474 Fed. Appx. 736, 739 (10th Cir. 2012) (mandate divests Circuit of jurisdiction and returns jurisdiction to district court); *Burton v. Johnson*, 975 F.2d 690, 693 (10th Cir. 1992) (district court reacquires jurisdiction over matters involved in the appeal only upon return of mandate). For this reason, the court dismisses the motion for relief from judgment (doc. 54) without prejudice to refile once the Tenth Circuit's mandate has issued.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff Kraft Foodservice, Inc. and Safeway, Inc.'s motion for relief from judgment (doc. 54) is dismissed without prejudice.

IT IS SO ORDERED.

Dated this 21st day of August, 2015, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge