

UNITED STATES COURT OF APPEALS

OCT 05 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FRONTLINE PROCESSING CORP., a
Nevada corporation,

Plaintiff-counter-defendant -
Appellee,

v.

FIRST STATE BANK OF ELDORADO,
ELDORADO, ILLINOIS, an Illionois
corporation,

Defendant-counter-claimant -
Appellant,

v.

LMA UNDERWRITING AGENCY,
INC.; CHRISTOPHER L. KITTLER,

Third-party-defendants -
Appellees.

No. 08-35879

D.C. No. CV 01-00074-RFC
District of Montana,
Butte

ORDER AMENDING
MEMORANDUM DISPOSITION
AND DENYING PETITION FOR
REHEARING

FRONTLINE PROCESSING CORP., a
Nevada corporation,

Plaintiff-counter-defendant -
Appellant,

v.

FIRST STATE BANK OF ELDORADO,
ELDORADO, ILLINOIS, an Illinois

No. 09-35166

D.C. No. CV 01-00074-BU-RFC

corporation,

Defendant-counter-claimant -
Appellee,

v.

LMA UNDERWRITING AGENCY,
INC.; CHRISTOPHER L. KITTLER,

Third-party-defendants -
Appellants.

Before: REINHARDT, GRABER, and PAEZ, Circuit Judges.

Appellant's Motion for Leave to File a Reply in Support of Petition for Rehearing is GRANTED. The reply tendered September 15, 2010, is ordered filed.

The memorandum disposition filed July 30, 2010, is amended as follows:

On page 4, replace the first full paragraph with:

We review for clear error a district court's factual findings. Bertelsen v. Harris, 537 F.3d 1047, 1056 (9th Cir. 2008). Defendant argues that \$160,000 of the Count IIA award is duplicative of the Count IV award requiring payment of "the Wade Cook reserve money, plus interest." The district court's findings of fact show that Defendant twice deducted from Plaintiff's income "\$80,000 going to reserve." The district court specified neither which funds comprised the Wade Cook Reserve nor which reserve account received the two \$80,000 deductions. Because the district court's award and findings of fact are ambiguous, we remand to the district court to determine whether the \$160,000 was awarded under either Count IIA or Count IV, or both.

On page 13, replace the last paragraph with:

AFFIRMED in part, and REMANDED in part with instructions to dismiss Defendant's indemnification counterclaims without prejudice and to clarify the award under Count IIA and Count IV.

With these amendments, the petition for panel rehearing is DENIED. No further petitions for rehearing or for rehearing en banc may be filed.