

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 1:12-cv-02547-RM-MEH

THE PIONEER CENTRES HOLDING COMPANY  
EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST  
AND ITS TRUSTEES, MATTHEW BREWER,  
ROBERT JENSEN AND SUSAN DUKES,

Plaintiffs,

v.

ALERUS FINANCIAL, N.A. and  
BERENBAUM WEINSHIENK, P.C.,

Defendants.

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ALERUS FINANCIAL, N.A.,

Third-Party Plaintiff and Counterclaim Plaintiff,

v.

MATTHEW BREWER, ROBERT JENSEN,  
SUSAN DUKES, PIONEER CENTRES HOLDING COMPANY, and  
RICHARD EASON,

Third-Party Defendants and Counterclaim Defendants.

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**ORDER**

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By the following orders, the Court dismissed all claims in this action except Third-Party Plaintiff Alerus Financial, N.A.'s ("Alerus") Count II for Contractual Indemnification against Third-Party Defendant Pioneer Centres Holding Company ("Pioneer"):

- (1) Oral order issued on February 19, 2015 (ECF No. 339), dismissing Alerus' Count III for Accounting against Third-Party Defendant Pioneer and Plaintiff Trustees Brewer, Jensen and Dukes;
- (2) Order dated May 1, 2015 (ECF No. 343), dismissing Alerus' Count I for Indemnification and Contribution against Plaintiff Trustees Brewer, Jensen and Dukes and Third-Party Defendants Pioneer and Richard Eason; and
- (3) Order dated May 1, 2015 (ECF No. 342), dismissing Plaintiffs' claims against Defendants.

By Unopposed Motion to Dismiss its Contractual Indemnification Claim against Pioneer Centres Holding Company with Prejudice ("Motion") (ECF No. 357), filed pursuant to Fed. R. Civ. P. 41(a)(2), Alerus requests this Court to dismiss its remaining count (Count II) – and the only claim remaining in this matter – with prejudice. In the Motion, Alerus has advised the Court that "Pioneer and its related parties stated that they reserve their rights to seek costs in connection with the entry of a final judgment." In addition, via email, Pioneer has advised the Court and the parties "that Pioneer has reserved its rights to seek any recoverable costs or fees at the appropriate time." Upon review of Alerus' Motion, the prior orders, the court file, the applicable rules, and being otherwise fully advised, it is

**ORDERED** that Alerus Financial, N.A.'s Unopposed Motion to Dismiss its Contractual Indemnification Claim against Pioneer Centres Holding Company with Prejudice (ECF No. 357) is **GRANTED**, and it is

**FURTHER ORDERED** that Alerus Financial, N.A.'s Count II of its Third-Party Complaint and Counterclaims seeking contractual indemnification against Third-Party Defendant

Pioneer Centres Holding Company (ECF No. 64) is **DISMISSED WITH PREJUDICE**, and it is

**FURTHER ORDERED** that the issue of costs and attorney's fees as between Third-Party Plaintiff Alerus Financial, N.A. and Third-Party Defendant Pioneer Centres Holding Company relating to Alerus Financial, N.A.'s Count II for Contractual Indemnification is expressly reserved by Pioneer Centres Holding Company. Any issue which Pioneer Centres Holding Company wishes to raise, however, must be timely made and in accordance with all applicable laws, rules and procedures, and it is

**FURTHER ORDERED** that the Trial Preparation Conference set for June 5, 2015 at 9:00 a.m. is hereby **VACATED**, and it is

**FURTHER ORDERED** that the *Daubert* Hearing set for June 19, 2015 at 1:30 p.m. is hereby **VACATED**, and it is

**FURTHER ORDERED** that all pending motions (ECF Nos. 350-355) are **DENIED AS MOOT**, and it is

**FURTHER ORDERED** that the four-day Bench Trial set to begin June 29, 2015 is hereby **VACATED**, and it is

**FURTHER ORDERED** that the Clerk of the Court shall enter **JUDGMENT** in accordance with the Court's Orders, and it is

**FURTHER ORDERED** that the following parties are awarded costs and shall within 14 days of the date of this Order file a bill of costs, in accordance with the procedures under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1, which shall be taxed by the Clerk of the Court:

(1) Costs are awarded in favor Plaintiff Trustees Matthew Brewer, Robert Jensen and

Susan Dukes and Third-Party Defendants Pioneer Centres Holding Company and Richard Eason and against Alerus Financial N.A. on Alerus Financial N.A.'s Count I for Indemnification and Contribution;

(2) Costs are awarded in favor of Third-Party Defendant Pioneer Centres Holding Company and Plaintiff Trustees Matthew Brewer, Robert Jensen and Susan Dukes and against Alerus Financial N.A. on Alerus Financial N.A.'s Count III for Accounting; and

(3) Costs are awarded in favor of Defendants Alerus Financial, N.A. and Berenbaum Weinshienk, P.C. and against Plaintiffs The Pioneer Centres Holding Company Employee Stock Ownership Plan and Trust and its Trustees, Matthew Brewer, Robert Jensen and Susan Dukes.

DATED this 27th day of May, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE  
United States District Judge