

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

BANCINSURE, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 12-2110-KHV
CARL L. MCCAFFREE, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff’s Motion To Amend Judgment (Doc. #223) filed March 26, 2014. For the following reasons, plaintiff’s motion is overruled.

First, the Pretrial Order (Doc. #160) filed June 27, 2013, does not seek damages. Plaintiff cites pages 10 and 31 for its position that in this case, it has “maintained its claim to repayment.” Memorandum In Support Of Motion To Amend Judgment (Doc. #224) filed March 26, 2014 at 3. In fact, the referenced pages merely recite the terms of a binding settlement agreement by which the parties settled the underlying action.

Second, plaintiff did not seek summary judgment on any theory of damages. If it wished to obtain summary judgment on damages, it should have filed a timely motion to that effect. In the alternative, it could have sought partial summary judgment on the coverage issue and left damage issues for trial or other resolution.

Third, plaintiff has no present right to recover under the settlement agreement. The agreement expressly contemplates that until all appeal rights are exhausted, plaintiff’s claim is premature. Stated otherwise, no breach of the settlement agreement has occurred and no case or controversy exists as to performance of the settlement agreement.

Fourth, even if amendment would not prevent defendants from appealing, it would be unjust to require defendants to post a supersedeas bond for the amount of the required judgment in order to appeal the coverage decision. As noted, their liability for that judgment has not been established under the settlement agreement or otherwise, at this time.

IT IS THEREFORE ORDERED that plaintiff's Motion To Amend Judgment (Doc. #223) filed March 26, 2014 be and hereby is **OVERRULED**.

Dated this 24th day of April, 2014, at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge