

On Tue, Oct 25, 2011 at 3:49 PM, Gary Hanson <gary@stumbolaw.com> wrote:

RE: The Douglas #4 10th Cir. Decision.

I'm not clear on what the court has determined about a requirement of a showing of necessity for this guaranteed loan.

For what it's worth, the Kansas legislature substantially amended the RWD powers statute, KSA 82A-619, in a way that changed their reference to "necessity" as it relates to what is now subsection (g). We're in the process of doing a compare/contrast on those changes and will share them as soon as they're done. If anything, it seems to suggest that for some reason, they split the "agreements" clause from the "aid" clause, perhaps emphasizing the need of necessity for the former but not the latter.

I have some concern that this 10th Cir. decision creates some uncertainty around existing guaranteed loans in Kansas, and prospects for new ones. Although not directly on point, the necessity requirement, or who determines if it has been met, applies equally to USDA direct and other loans. With the legislative session approaching, we're considering whether some changes to 82A-619 would be helpful or not; or if it is better to let this case take its course and look for some clarification from the Circuit or barring that, the trial court on remand.

I understand your [Steve Harris] comment about the independence of the two subparts of 619(g) as containing independent requirements. A couple of things would help me on this. First, can you send me a copy of the guarantee that is in issue in this case? The point being, isn't a guarantee usually between the lender and the guarantor (USDA) and not "an agreement" between the borrower and the USDA? Or is there such an agreement with the district involved here that could get the court to the first clause of 619(g)? Also, do you have the old repealed statutes referenced in the second clause of 619(g) and your brief? We seem unable to access those here at our office. Do those repealed sections expressly authorize USDA aid in the form of loan guaranties?

Gary
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