

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

LIMA DELTA COMPANY, TRIDENT )	)	
AVIATION SERVICES, LLC and )	)	
SOCIÉTÉ COMMERCIALE ET )	)	
INDUSTRIELLE KATANGAISE, )	)	
	)	
Plaintiffs, )	)	
	)	
v. )	)	C.A. No. N14C-02-101 JRJ CCLD
	)	
GLOBAL AEROSPACE, INC., et al., )	)	
	)	
Defendants. )	)	

**AND NOW TO WIT**, this 17th day of March, 2016, the Court having duly considered Plaintiffs’ Motion for Certification of Final Judgment as to Insurers,<sup>1</sup> and Defendants’ Response in Opposition to Plaintiffs’ Combined Motion for Certification of Final Judgment and Interlocutory Appeal,<sup>2</sup> **IT APPEARS THAT:**

1. This case involves an insurance coverage dispute, in which Plaintiffs Lima Delta Company, Trident Aviation Services, LLC, and Société Commerciale et Industrielle Katangaise (“Lima Delta”) seek coverage under an aviation insurance policy (the “Policy”), issued by Global Aerospace, Inc. (“Global Aerospace”) for an airplane crash that occurred in the Democratic Republic of

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<sup>1</sup> Plaintiffs’ Motion for Certification of Final Judgment (As to Insurers) and Interlocutory Appeal (As to Wells Fargo) (“Pls.’ Mot. for Certification Final J.”) (Trans. ID. 58643656).

<sup>2</sup> Defendants’ Response in Opposition to Plaintiffs’ Combined Motion for Certification of Final Judgment and Interlocutory Appeal (“Defs.’ Resp.”) (Trans. ID. 58695993).

Congo on February 12, 2012.<sup>3</sup> On May 7, 2012, approximately three months after the crash, Global Aerospace filed a declaratory judgment and rescission action against Lima Delta in Fulton County Superior Court, Georgia (“Georgia Action”).<sup>4</sup> On February 11, 2014, Lima Delta filed the instant Delaware Action.<sup>5</sup> Lima Delta alleges that Defendants Global Aerospace, National Indemnity Company, American Alternative Insurance Corporation, Tokio Marine & Nichido Fire Insurance Company, Ltd. (USB), Mitsui Sumitomo Insurance Company of America, and American Commerce Insurance Company (collectively “Defendant Insurers”) have unreasonably withheld coverage under the Policy.<sup>6</sup> Lima Delta also asserts claims against Wells Fargo Insurance Services USA, Inc. (“Wells Fargo”) as Lima Delta’s insurance broker.

2. Defendant Insurers moved to dismiss the Delaware Action in favor of the first-filed Georgia Action. Wells Fargo, who is not a party to the Georgia Action, filed a Motion to Stay. While the Delaware Action was ongoing, the Georgia Superior Court granted Global Aerospace’s motion for summary judgment.<sup>7</sup> On February 19, 2016, this Court granted the Defendant Insurers’ Motion to Dismiss. The Court noted that the Delaware Action was filed twenty-one months after the

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<sup>3</sup> *Lima Delta Co. v. Glob. Aerospace, Inc.*, 2016 WL 691965, at \*1–2 (Del. Super. Feb. 19, 2016).

<sup>4</sup> *Id.* at \*1.

<sup>5</sup> *Id.* at \*2.

<sup>6</sup> Second Amended Complaint (Trans. ID. 55449371).

<sup>7</sup> *Lima Delta*, 2016 WL 691965, at \*2.

Georgia Action, and after conducting a thorough *McWane*<sup>8</sup> analysis, dismissed Lima Delta's claims against the Defendant Insurers in favor of the first-filed Georgia Action. The Court also granted Wells Fargo's Motion to Stay until the Georgia Action reaches a final, non-appealable resolution.

3. On February 29, 2016, Lima Delta filed the instant motion, seeking certification of a final judgment with respect to the Court's decision granting the Defendant Insurers' Motion to Dismiss. Lima Delta argues that under Superior Court Civil Rule 54(b) the Court should enter a final judgment because: (1) the dismissal of Lima Delta's claims against the Defendant Insurers is case-dispositive as to six of the seven defendants; (2) if a final appeal on the forum dispute is made to wait until final resolution of the Georgia Action, the Georgia Action may eventually present a "*fait accompli*" to Lima Delta's detriment; and (3) given the amount in controversy, further delay in Delaware would be manifestly prejudicial to Lima Delta.<sup>9</sup>

4. Pursuant to Superior Court Civil Rule 54(b), the Court may exercise its discretion and certify final judgment if the Court finds that: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying

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<sup>8</sup> *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970).

<sup>9</sup> Pls.' Mot. for Certification Final J. at 6–7.

an appeal.<sup>10</sup>

5. In deciding whether there is “just reason for delay,” the Court must consider: (1) the hardship or injustice suffered by the moving party in the absence of the final judgment; and (2) the interests of judicial administration and judicial economy.<sup>11</sup> “A determination of whether there is just reason for delaying an appeal is addressed to the sound discretion of the Court.”<sup>12</sup> “Rule 54(b) exists to create a discretionary power to afford a remedy in the infrequent harsh case . . . .”<sup>13</sup> Thus, “entry of final judgment is to be done cautiously and frugally.”<sup>14</sup>

6. Lima Delta has not demonstrated that it will suffer the necessary hardship or injustice in the absence of a final judgment. Even if Lima Delta was allowed to appeal immediately, the Delaware Supreme Court will likely not decide the appeal until after a ruling is issued by the Georgia Court of Appeals.<sup>15</sup> Briefing on the appeal of the Georgia Superior Court’s Summary Judgment Order was completed on March 7, 2016, and the Georgia Court of Appeals has indicated that the matter

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<sup>10</sup> *Tang Capital Partners, LP v. Norton*, 2012 WL 3776669, at \*2 (Del. Ch. 2012); *Johnson v. Preferred Prof'l Ins. Co.*, 2015 WL 413608, at \*2 (Del. Super. 2015). Superior Court Civil Rule 54(b) provides that: “[w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the Court may direct the entry of a final judgment upon one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.”

<sup>11</sup> *Johnson*, 2015 WL 413608, at \*4.

<sup>12</sup> *In re Tri-Star Pictures, Inc., Litig.*, 1989 WL 112740, at \*1 (Del. Ch. 1989) (internal citations omitted).

<sup>13</sup> *Id.*

<sup>14</sup> *Johnson*, 2015 WL 413608, at \*4.

<sup>15</sup> *Tri-Star*, 1989 WL 112740, at \*2 (“[T]here is no guarantee that an immediate appeal would obviate or even reduce the risk of a second trial.”).

will be decided on the papers.<sup>16</sup> Lima Delta’s argument that waiting for a decision in the Georgia Action may present a “*fait accompli*” is speculative.<sup>17</sup> Any alleged hardship or injustice will not be alleviated by an immediate appeal.<sup>18</sup>

7. The remainder of the Delaware Action against Wells Fargo is stayed until the Georgia Action reaches a final, non-appealable resolution.<sup>19</sup> Given the advanced stage of the Georgia Action—both now and at the time the Delaware Action was filed—any alleged prejudice or hardship that Lima Delta may suffer from not being able to immediately appeal is outweighed by judicial administrative

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<sup>16</sup> Defs.’ Resp. at 9.

<sup>17</sup> *Tri-Star*, 1989 WL 112740, at \*2 (“That risk, however, is highly speculative, and I am not persuaded that it poses ‘hardship’ of the kind that has prompted other courts to enter Rule 54(b) judgments in other decided cases.”).

<sup>18</sup> *World Energy Ventures, LLC v. Northwind Gulf Coast LLC*, 2015 WL 6772638, at \*4 (Del. Super. 2015) (“[T]he Court must weigh the judicial administrative interests, against the possibility of some danger of hardship or injustice which would be alleviated by immediate appeal.”) (internal quotations omitted).

<sup>19</sup> Before dismissing Lima Delta’s claims against the Defendant Insurers, the Court conducted a thorough *McWane* analysis and specifically found that: (1) the parties to the Georgia Action and the Delaware Action are functionally identical; (2) the issues in the Georgia Action and the Delaware Action are substantially the same; (3) Georgia is capable of rendering prompt and complete justice in this case; (4) it would be a “wasteful duplication of time, effort, and expense” if the Defendant Insurers are forced to continue litigating in Delaware; and (5) given the advanced stage of the Georgia Action, comity would be poorly served by allowing the Delaware Action to continue. *Lima Delta*, 2016 WL 691965, at \*3–6. The remainder of the Delaware Action against Defendant Wells Fargo is being stayed until the Georgia Action reaches a final, non-appealable resolution because “there is a substantial risk that the parties and the Court’s resources will be wasted or used inefficiently resolving issues between Lima Delta and Wells Fargo that may be narrowed, clarified, or rendered moot by the Georgia Action.” *Id.* at \*8. *See also Johnson*, 2015 WL 413608, at \*5 (“The potential for Defendants’ contribution claim to evaporate, depending upon the result of this litigation, also impacts upon this Court’s determination not to ‘increase the already sizable burden of appellate dockets.’”); *Sequa Corp. v. Aetna Cas. & Sur. Co.*, 1992 WL 207251, at \*2 (Del. Super. 1992) (“The possibility that future developments could moot the need to review the issues that are the subject of a Rule 54(b) motion is one factor to be considered in evaluating judicial interests.” (citing *Sussex Drug Prods. v. Kanasco, Ltd.*, 920 F.2d 1150, 1156 (3d Cir. 1990)).

interests and the Delaware Supreme Court’s longstanding policy against piecemeal appeals.<sup>20</sup> Lima Delta will have the opportunity to appeal this Court’s opinion dismissing the Defendant Insurers upon the resolution of *all* the claims in this litigation.

8. The Court finds just reason to delay Lima Delta’s appeal because declining Rule 54(b) relief will not cause substantial hardship to Lima Delta and the interests of judicial administration and judicial economy do not favor an immediate appeal.

**WHEREFORE**, Plaintiffs’ Motion for Certification of Final Judgment as to Insurers is **DENIED**.

**IT IS SO ORDERED.**

/s/Jan R. Jurden  
Jan R. Jurden, President Judge

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<sup>20</sup> *Tri-Star*, 1989 WL 112740, at \*1 (“The long established policy against piecemeal appeals requires that this Court exercise that discretion sparingly.”); *World Energy Ventures*, 2015 WL 6772638, at \*5 (“Without any other allegations of potential hardship or extraordinary circumstances warranting immediate appeal, consideration of the potential threat to judicial administrative interests tips the scale heavily in favor of denying entry of judgment. That many of the remaining claims in this case are intertwined presents an increased likelihood the Delaware Supreme Court would be forced to ‘pour over the facts and issues of this entire case more than once’ if this Court were to enter final judgment as to the breach of contract claims.”).