

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.)		

Date Submitted: February 29, 2016

Date Decided: March 17, 2016

ORDER REFUSING TO CERTIFY AN INTERLOCUTORY APPEAL

This 17th day of March, 2016, the Plaintiffs Lima Delta Company, Trident Aviation Services, LLC, and Société Commerciale et Industrielle Katangaise (collectively “Lima Delta”) having made application under Rule 42 of the Supreme Court for an order certifying an appeal from the interlocutory order of this Court, dated February 19, 2016,¹ it appears to the Court that:

1. This case involves an insurance coverage dispute, in which Lima Delta seeks coverage under an aviation insurance policy (the “Policy”), issued by Global Aerospace, Inc. (“Global Aerospace”) for an airplane crash that occurred in the

¹ *Lima Delta Co. v. Glob. Aerospace, Inc.*, 2016 WL 691965 (Del. Super. Feb. 19, 2016).

Democratic Republic of Congo on February 12, 2012.² 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”).³ On February 11, 2014, Lima Delta filed the instant Delaware Action—twenty-one months after the Georgia Action was filed.⁴ 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.⁵ 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.⁶ On February 19, 2016, this Court granted Defendant Insurers’ Motion to Dismiss and

² *Lima Delta*, 2016 WL 691965, at *1–2.

³ *Id.* at * 1.

⁴ *Id.* at * 2.

⁵ Second Amended Complaint (Trans. ID. 55449371).

⁶ *Lima Delta*, 2016 WL 691965, at *2.

granted Wells Fargo's Motion to Stay.

3. On February 29, 2016, Lima Delta filed the instant "Motion for Certification of Final Judgment or Alternatively Interlocutory Appeal (as to Insurers) and Interlocutory Appeal (as to Wells Fargo)." ⁷ Lima Delta seeks: (1) a certification of a final judgment as to the Defendant Insurers, or in the alternative, certification of an interlocutory appeal of the February 19, 2016 decision dismissing Lima Delta's claims against the Defendant Insurers; and (2) a certification of an interlocutory appeal of the February 19, 2016 decision granting Wells Fargo's Motion to Stay. ⁸

4. On March 17, 2016, the Court issued an order denying Lima Delta's Motion for Certification of Final Judgment. Accordingly, before the Court is Lima Delta's Motion for Certification of Interlocutory Appeal as to Defendant Insurers and Motion for Certification of Interlocutory Appeal as to Wells Fargo. Lima Delta incorrectly relies on an outdated version of Delaware Supreme Court Rule 42. Although Lima Delta did not comply with the current version of Rule 42, the Court will nevertheless determine the merits of the motion for certification of interlocutory appeal. ⁹ Lima Delta maintains that its application meets the criteria

⁷ ("Pls.' Mot. for Certification Final J.") (Trans. ID. 58643656).

⁸ *Id.* at 1–2.

⁹ The Court also notes that Lima Delta's motion for certification of interlocutory appeal also fails to comply with Rule 42(b)(iii)'s requirement that "[a]ny application for interlocutory review shall contain a statement that the applicant and the applicant's counsel have determined in good faith that the application meets the criteria set forth in this paragraph."

listed in Rules 42(b)(i), and 42(b)(iii)(A), (B), (G), and (H).

5. Under Rule 42, the Court must: (1) determine that the order to be certified for appeal “decides a substantial issue of material importance that merits appellate review before a final judgment;”¹⁰ (2) decide whether to certify via consideration of the eight factors listed in Rule 42(b)(iii);¹¹ (3) consider the Court’s own assessment of the most efficient and just schedule to resolve the case; and (4) identify whether and why the likely benefits of interlocutory review outweigh the probable costs, such that interlocutory review is in the interest of justice.¹²

¹⁰ Del. Supr. Ct. R. 42(b)(i).

¹¹ Delaware Supreme Court Rule 42(b)(iii) provides that the trial court should consider whether:

- (A) The interlocutory order involves a question of law resolved for the first time in this State;
- (B) The decisions of the trial courts are conflicting upon the question of law;
- (C) The question of law relates to the constitutionality, construction, or application of a statute of this State, which has not been, but should be, settled by this Court in advance of an appeal from a final order;
- (D) The interlocutory order has sustained the controverted jurisdiction of the trial court;
- (E) The interlocutory order has reversed or set aside a prior decision of the trial court, a jury, or an administrative agency from which an appeal was taken to the trial court which had decided a significant issue and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice;
- (F) The interlocutory order has vacated or opened a judgment of the trial court;
- (G) Review of the interlocutory order may terminate the litigation; or
- (H) Review of the interlocutory order may serve considerations of justice.

¹² *Id.* Those “probable costs” are informed, in part, by Rule 42(b)(ii), *i.e.*, interlocutory appeals “disrupt the normal procession of litigation, cause delay, and can threaten to exhaust scarce party and judicial resources.” Del. Supr. Ct. R. 42(b)(ii).

A. Motion for Certification of Interlocutory Appeal as to Defendant Insurers

6. Lima Delta maintains that its motion for certification of interlocutory appeal as to Defendant Insurers meets the criteria of Rule 42(b) because the dismissal: (1) determines a substantial issue; (2) establishes legal rights; (3) resolves a question of first impression in Delaware; (4) conflicts with prior rulings of the Superior Court; and (5) interlocutory review will serve compelling considerations of justice.¹³

7. The Court must first determine if the February 19, 2016 decision “decides a substantial issue of material importance that merits appellate review before a final judgment.”¹⁴ Because the Court dismissed the Delaware Action in favor of the Georgia Action, the February 19, 2016 decision is capable of interlocutory review because it decided a substantial issue of material importance.

8. After considering the eight factors listed in Rule 42(b)(iii)(A)–(H), and the remainder of the Rule 42 analysis, certification for interlocutory review is not appropriate in this case.

9. First, the Court disagrees with Lima Delta’s contention that the February 19, 2016 decision determined a question of law resolved for the first time in this State. According to Lima Delta, the question of which it seeks certification is—“whether policyholders, when confronted by an insurer’s anticipatory filing,

¹³ Pls.’ Mot. for Certification Final J. at 7–9.

¹⁴ Del. Supr. Ct. R. 42(b)(i).

waive or compromise their claim of first-filed status by contesting the propriety of the insurer's choice of forum in that foreign forum.”¹⁵ The Court, however, did not analyze whether Lima Delta “waived or compromised” their claim of first-filed status by contesting the propriety of the Georgia forum before commencing the Delaware Action. The Delaware Action was filed *twenty-one months* after the Georgia Action. The Court applied the well-settled *McWane* doctrine and determined that the later-filed Delaware Action should be dismissed in favor of the first-filed Georgia Action.¹⁶

10. Lima Delta's argument that the February 19, 2016 decision conflicts with prior Superior Court holdings is also unavailing.¹⁷ This Court applied well-settled Delaware law and engaged in a thorough analysis of the applicable *McWane* doctrine. Further, in the February 19, 2016 decision, the Court distinguished the Superior Court holdings that Lima Delta contends are in “conflict,” specifically noting that Lima Delta waited twenty-one months to commence the Delaware Action, taking the matter out of the “contemporaneously” first-filed action analysis.¹⁸

11. Finally, certification will not promote the most efficient and just schedule to resolve this case. Nor will the likely benefits of interlocutory review

¹⁵ Pls.' Mot. for Certification Final J. at 8.

¹⁶ *Lima Delta*, 2016 WL 691965, at* 3–6.

¹⁷ Pls.' Mot. for Certification Final J. at 8–9.

¹⁸ *Lima Delta*, 2016 WL 691965, at *3–5

outweigh the probable costs, such that interlocutory review is in the interest of justice. “Interlocutory appeals should be exceptional, not routine, because they disrupt the normal procession of litigation, cause delay, and can threaten to exhaust scarce party and judicial resources.”¹⁹ This case is not exceptional. The Delaware Action was filed twenty-one months after the Georgia Action, and after conducting a thorough *McWane* analysis the Court dismissed Lima Delta’s claims against the Defendant Insurers in favor of the first-filed Georgia Action. The Court 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 against Defendant Insurers.²⁰

12. The Court finds that Lima Delta has failed to meet the strict standards for certification under Rule 42.

¹⁹ Del. Supr. Ct. R. 42(b)(ii).

²⁰ *Lima Delta*, 2016 WL 691965, at * 3–6.

B. Motion for Certification of Interlocutory Appeal as to Wells Fargo

13. On February 19, 2016, the Court granted Defendant Wells Fargo's Motion to Stay. "[The] Supreme Court generally does not accept interlocutory appeals relating to motions to stay because motions to stay usually do not address the substantive merits of the parties' underlying claims, which is the central focus of the Rule 42 analysis."²¹ Lima Delta's sole argument for interlocutory review of the Court's decision to grant Wells Fargo's Motion to Stay is that the "decision implicates the same interests that led to interlocutory review of the 'stay' orders in *McWane* and *Cryo-Maid*."²²

14. *McWane Cast Iron Pipe Corporation v. McDowell-Wellman Engineering Company*,²³ and *General Goods Corporation v. Cryo-Maid Incorporation*,²⁴ involved interlocutory orders staying proceedings in Delaware in favor of a competing action in a foreign forum, where the case would proceed on the merits.²⁵ In this case, however, there is no forum dispute with Wells Fargo. Wells Fargo is not a party to the Georgia Action, and the case against Wells Fargo

²¹ *MICH II Holdings LLC v. Schron*, 2012 WL 3224351, at *6 (Del. Ch. 2012).

²² Pls.' Mot. for Certification Final J. at 10.

²³ 263 A.2d 281, (Del. 1970).

²⁴ 198 A.2d 681 (Del. 1964).

²⁵ *McWane*, 263 A.2d at 284 ("[T]he order below is reversed and the cause remanded to the Superior Court with directions to stay further proceedings in that Court pending the development and outcome of the litigation between the parties in the United States District Court for the Northern District of Alabama"); *Cryo-Maid*, 198 A.2d at 682–85 (holding that an order staying prosecution of Delaware action for declaratory judgment was not abuse of discretion even though Illinois action involving same subject matter was filed subsequent to Delaware action).

will proceed on the merits in Delaware once the Georgia Action reaches a final resolution.

15. The power to grant a stay is soundly within the Court's discretion.²⁶ The controversy between Global Aerospace and Lima Delta in the Georgia Action centers on Global Aerospace's issuance of the Policy to Lima Delta. As the insurance broker, Wells Fargo was the middleman, and resolution of the controversy between Lima Delta and Wells Fargo, is largely contingent upon resolution of the Georgia Action. This Court determined that "[u]ntil the Georgia Action reaches a final, non-appealable resolution, 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."²⁷

16. After considering the eight factors in Rule 42(b)(iii), the Court finds that Rule 42(b)(iii)(A)–(H) are not implicated. Certification will not promote the most efficient and just schedule to resolve this case. Nor will the likely benefits of interlocutory review outweigh the probable costs, such that interlocutory review is in the interest of justice. The Court finds, therefore, that Lima Delta has failed to meet the strict standards for certification under Rule 42.

²⁶ *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 4516645, at *2 (Del. Ch. 2008).

²⁷ *Lima Delta*, 2016 WL 691965, at *8.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiffs' Motion for Certification of Interlocutory Appeal of the Court's February 19, 2016 order is **DENIED**.

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