

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AT&T CORP.,)
)
 Plaintiff,)
 v.) C.A. No. 04C-11-167 (JRJ)
)
CLARENDON AMERICA)
INSURANCE CO., et al.)
 Defendants.)

Date Submitted: May 4, 2006

Date Decided: May 18, 2006

**ORDER GRANTING AT&T CORP. LEAVE TO APPEAL
THE AMENDED OPINION AND ORDER OF APRIL 25, 2006**

This 18th day of May, 2006, plaintiff AT&T Corp. (“AT&T”) having made application pursuant to Rule 42 of the Supreme Court for an Order certifying an appeal from the Amended Opinion and Order granting summary judgment to multiple defendants, dated April 25, 2006 (Dkt. No. 218) (the “Order”), the Court makes the following findings:

1. The Order determines a substantial issue and establishes a legal right -- namely, the right of various defendant insurers to deny coverage under three sets of D&O policies for over \$340 million AT&T paid on behalf of itself and various directors to settle and defend underlying lawsuits, and the right of

those directors to coverage under those same policies.¹ Also, the Court interpreted the law of New York, New Jersey and California to resolve these substantial insurance contract interpretation issues.

2. Considerations of justice would be served by interlocutory review because of the following:

- (a) This case involves hundreds of millions of dollars of insurance coverage;
- (b) The complexity, amount of coverage, and number of policies at issue prompted the parties, (with the Court's approval,) to phase this litigation. In so doing, the parties acknowledged the importance of obtaining an early determination of these issues (which are the subject of the Order), and the impact that an early determination of those issues would have on the litigation.
- (c) Resolution by the Supreme Court of the many contract interpretation

¹ See, e.g., *Liggett Group, Inc. v. Ace Prop. & Cas. Ins. Co.*, 798 A.2d 1024, 1028 (Del. 2002) (hearing interlocutory appeal of decision granting summary judgment in favor of the insurers in a dispute over whether liability insurance coverage is available for tobacco-related injuries); *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 606 A.2d 73, 74 (Del. 1992) (finding that the right of an insurer to exclude certain claims from coverage is a "substantial issue" sufficient to satisfy the requirements of Supr. Ct. Rule 42); *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670, 671 (Del. 1978) (holding summary judgment decision determining the validity of a contract provision essential to the position of parties established a "substantial issue" and the legal right of the insured to recover damages pursuant to the policy). See also *Shook & Fletcher Asbestos Settlement Trust v. Safety Nat. Cas. Corp.*, 2005 WL 300780, at *2 (Del. Super.) ("The extent of insurance coverage as a matter of law is a substantial issue for purposes of interlocutory appeal."); *Monsanto Co. v. Aema Cas. & Sur. Co.*, Del. Super., C.A. No. 88-JA-118, at 2, Ridgely, H. (May 9, 1994) (ORDER) (determining that, as with other threshold issues of insurance policy interpretation, an issue that addresses "the extent of insurance coverage as a matter of law" is a substantial issue); *Monsanto Co. v. Aema Cas. & Sur. Co.*, Del. Super., C.A. No. 88-JA-118, at ¶ 1, Ridgely, H. (Feb. 10, 1994) (ORDER) (finding that where the issue "bears directly upon the existence of insurance coverage as a matter of law" it therefore determines "a substantial issue").

issues addressed in the Order will: (1) significantly affect the subsequent phases, the scope of discovery, and the length and complexity of the trial, the costs to parties, and (2) avoid an unnecessary expenditure of Delaware's limited judicial resources.

WHEREFORE, IT IS HEREBY ORDERED that the Court's Order of April 25, 2006 is hereby certified to the Supreme Court of the State of Delaware for disposition in accordance with Rule 42 of that Court.

Jan R. Jurden, Judge