

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
DOCKET NO. BCD-CV-19-37

CORINTH PELLETS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 ARCH SPECIALTY INSURANCE CO.,)
 et al.,)
)
 Defendants,)
)
 and)
)
 ATTORNEY GENERAL, STATE OF)
 MAINE, and MAINE)
 SUPERINTENDENT OF INSURANCE,)
)
 Intervenors.)

ORDER ENTERING FINAL
JUDGMENT AS TO SOME BUT NOT
ALL CLAIMS PURSUANT TO M.R.
CIV. P. 54(b)(1).

This case presents a question of first impression: Does the provision in the Surplus Lines Law governing cancellation and nonrenewal of surplus lines coverage, 24-A M.R.S. § 2009-A, require notice of nonrenewal in the absence of cancellation. This Court answered the question in the negative, and on January 23, 2020, issued two Orders (the “Orders”) pursuant to M.R. Civ. P. 12(b)(6) dismissing all claims against Defendant Arch Specialty Insurance Co. (“Arch”) for failure to provide notice of nonrenewal to Plaintiff Corinth Pellets, LLC (“Corinth Pellets”). Only the claims of Corinth Pellets against Defendant Varney Agency, Inc. (“Varney”) remain. On February 27, 2020, pursuant to M.R. Civ. P. 54(b)(1), Arch moved for the entry of final judgment on the claims against it, on the grounds that there is no just reason for delay. Arch’s motion is

unopposed.¹ For the reasons discussed below, the Court agrees there is no just reason for delay. Accordingly, the Court grants Arch's Motion for Entry of Final Judgment, and directs the entry of final judgment in favor of Arch on the claims against it in Corinth Pellets' Second Amended Complaint and Varney's Cross-Claim.

STANDARD OF REVIEW

A trial court has discretion to enter a final judgment pursuant to M.R. Civ. P. 54(b)(1) as to fewer than all claims or parties in a matter, but only upon an express determination that there is no just reason for delay. *McClare v. Roche*, 2014 ME 4, ¶ 8, 86 A.3d 22. The court's determination must be supported by findings of fact, and justified by consideration of the factors set forth in *Guidi v. Town of Turner*, 2004 ME 42, ¶ 12, 845 A.2d 1189. *McClare*, 2014 ME 4, ¶8.

FINDINGS

Construing the factual allegations contained in the Second Amended Complaint as admitted, *see Bonney v. Stephens Mem. Hosp.*, 2011 ME 46, ¶ 16, 17 A.3d 123, the Court made the following findings of fact in its Orders. Corinth Pellets was formed to own and operate a wood pellet mill located in Corinth, Maine. (Pl.'s Compl. ¶ 1.) On September 19, 2018, Corinth Pellets' mill suffered a catastrophic fire which destroyed the mill's manufacturing capability and put the mill out of business for the foreseeable future. (Pl.'s Compl. ¶ 1.)

Corinth Pellets is the named insured under a surplus lines commercial property policy issued by Arch. (Pl.'s Compl. ¶ 2.) Arch issued the policy for the mill for the policy period of January 13, 2017 to January 13, 2018, and then issued three, three-month renewals of the policy with the last such renewal expiring on September 18, 2018—one day before the fire. (Pl.'s Compl.

¹ Initially Corinth Pellets and Varney opposed Arch's motion for entry of final judgment, but only because Varney's motion for reconsideration had not yet been decided. Neither Corinth Pellets nor Varney stated any other basis for their opposition. On March 23, 2020, this Court entered an Order denying Varney's motion for reconsideration, thereby removing the only grounds presented for opposing entry of final judgment.

¶ 33.) The policy covered property damage, business interruption, and extra expenses for damages arising out of a covered loss event. (Pl.'s Compl. ¶ 1.) Under the terms of the policy, the damages Corinth Pellets suffered as a result of the fire would be a covered loss event if the policy was still in effect on the date of the fire. (Pl.'s Compl. ¶ 33.)

For a number of years, Corinth Pellets retained the Varney Agency to act as its insurance agent. (Pl.'s Compl. ¶ 6.) On September 5, 2018, an employee of the Varney Agency sent an email to Corinth Pellets reporting the following:

FYI...The current short-term policy for the building insurance is up on 9/18. The current insurance company can't extend past 9/18 as operations are running again. I have had various insurance companies quoting the past several weeks and should have quotes to review shortly. Once everything is back, we can decide which company to renew with.

No need to do anything on your end... Just an FYI on what we have been doing behind the scene.

(Pl.'s Compl. ¶ 16.) This was the first time Corinth Pellets learned that Arch had elected not to renew the policy. (Pl.'s Compl. ¶ 16.) Corinth Pellets never received any written or other notice from Arch that Arch would not renew or continue the policy past September 18, 2018. (Pl.'s Compl. ¶¶ 33, 37.) The Varney Agency ultimately did not acquire property insurance for Corinth Pellets from any source to cover the mill property for the period beginning after September 18, 2018 (Pl.'s Compl. ¶ 25.)

Corinth Pellets provided timely notice to Arch of the September 19, 2018 fire at the pellet mill. (Pl.'s Compl. ¶ 45.) The fire caused approximately \$15 million in damages to Corinth Pellets. (Pl.'s Compl. ¶ 31.) Arch denied coverage. (Pl.'s Compl. ¶ 46.)

DISCUSSION

Consideration of the factors set forth in *Guidi* supports the entry of partial final judgment in this case. *See Marquis v. Town of Kennebunk*, 2011 ME 128, ¶¶ 12-15, 36 A.3d 861.

1. The Relationship of Adjudicated and Unadjudicated Claims.

In its Second Amended Complaint, Corinth Pellets asserts two counts against Arch: Count I (Declaratory Judgment), and Count II (Breach of Contract). The Second Amended Complaint asserts six counts against Varney: Count III (Breach of Contract), Count IV (Promissory Estoppel), Count V (Negligence), Count VI (Negligent Misrepresentation), Count VII (Fraudulent Misrepresentation), and Count VIII (Breach of Fiduciary Duty). In its Cross-Claim, Varney asserts one count against Arch: Count I (Common Law Indemnification). The Orders dismissed all the claims against Arch: Counts I and II of the Complaint, and Count I of the Cross-Claim. The remaining claims are all asserted against Varney.

The adjudicated claims are not enmeshed with the unadjudicated claims. The two counts asserted against Arch in the Complaint, as well as Varney's Cross-Claim for indemnification, all hinge on interpretation of 24-A M.R.S. § 2009-A. The unadjudicated claims against Varney do not implicate 24-A M.R.S. § 2009-A. Moreover, the unadjudicated claims against Varney, for breach of contract and various torts, are not intertwined with the claims against Arch. Thus, the adjudicated claims are separable from the unadjudicated claims, and permit entry of final judgment on the adjudicated claims.

2. The Possibility That the Need for Review May be Mooted by Future Developments.

If an appeal is taken up upon entry of final judgment on the claims against Arch, Corinth Pellets will still have its case against Varney. Corinth Pellets has suggested it may seek a stay pending resolution of the anticipated appeal. Whether it seeks a stay or not is immaterial to the need for review. If Corinth Pellet's case against Varney is stayed, developments in the trial court

will cease until the appeal is decided. If Corinth Pellet's case against Varney is not stayed, proceedings in the trial court against Varney will proceed to resolution via dispositive motion or trial. Either way, a judgment for or against Varney will not moot the need for review. A judgment for Varney will mean that Corinth Pellets will await the outcome of the appeal in order to determine whether it has any grounds to pursue Arch. A judgment against Varney will mean that Varney will await the outcome of the appeal in order to determine whether it has grounds to seek indemnification from Arch. Hence, it is improbable that the need for review will be mooted by future developments in the trial court.

3. The Chance That the Same Issues Will Be Presented for Appeal More Than Once.

The remaining claims do not implicate 24-A M.R.S. § 2009-A. Accordingly, there is little chance the same issues will be presented to the Law Court more than once.

4. Whether Immediate Appeal Will Expedite or Delay Trial Court Proceedings.

It is possible that immediate appeal will delay the trial court's work, especially if Corinth Pellets seeks and is granted a stay pending the immediate appeal. However, any delay will be well worth the judicial economy, clarity and simplicity at the trial court level that would be obtained from learning on appeal whether Arch should remain in the case, participate in discovery, perhaps file another dispositive motion, and prepare for and participate in trial.

5. The Nature of the Legal Question Presented as Close or Near.

The question presented is a legal question of first impression. This Court determined the statute involved was unambiguous, and does not require notice absent cancellation, but Corinth Pellets, Varney, and the Intervenors all make reasonable arguments to the contrary. Further, if the statute is determined to be ambiguous, then that would require review of the legislative history,

which is confusing and contradictory. Accordingly, it is fair to say the legal question presented is close.

6. The Economic Effects of Both the Appeal and Any Delays.

The stakes in this case are extremely high. All the parties appear to want the appeal heard as soon as possible, and no party has objected based on the anticipated cost of the appeal. Although Corinth Pellets still has its claims against Varney, Corinth Pellets appears willing to wait for the appeal and in fact may seek a stay of the trial court proceedings. Varney also prefers to have the status of Arch clarified on appeal as soon as possible. The State, through the participation of the Intervenors, is interested for public policy purposes in having the appeal decided at the earliest date possible. Accordingly, there do not appear to be any adverse economic effects to the appeal and any resulting delays.

7. Miscellaneous Factors.

Interpretation of 24-A M.R.S. § 2009-A has significant public policy implications for the insurance market in Maine. The question of how to interpret 24-A M.R.S. § 2009-A is one of first impression, and is being monitored by parties who are not participants to the litigation. The question is especially important for Intervenor, the Superintendent of Insurance who is tasked with regulating the surplus lines insurance market in Maine.

CONCLUSION

For all the foregoing reasons, the Court determines there is no just reason for delay, and directs the entry of final judgment in favor of Arch on Counts I and II of the Complaint, and Count I of the Cross-Claim.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order and Final Judgment by reference on the docket for this case.

So Ordered.

Dated: 4/27/2020

/S
Michael A. Duddy
Judge, Business and Consumer Docket