

IN THE SUPREME COURT OF THE STATE OF NEVADA

CERTAIN UNDERWRITERS AT
LLOYDS LONDON SUBSCRIBING TO
POLICY NO. NP2867099/ ARS-
2350/2351/2352; SWISS REINSURANCE
CO.; GLOBE INDEMNITY CO.; XL
EUROPE INSURANCE CO.; ALLIANZ
INSURANCE CO.; GERLING GENERAL
INSURANCE CO.; AS SUBROGEEES OF
EL DORADO ENERGY LLC; AND EL
DORADO ENERGY, LLC,
Appellants,
vs.
TITAN CONTRACTING AND LEASING
COMPANY, INC.,
Respondent.

No. 43897

FILED

SEP 16 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. Richards
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order certified as final under former NRCP 54(b), dismissing appellants' remaining claims as to respondent Titan Contracting and Leasing Company. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

When our preliminary review of the docketing statement and the NRAP 3(e) documents revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, we noted that the certification under former NRCP 54(b) appeared improper because the order neither resolved at least one unrelated claim for relief in a multiple claim action nor resolved all the rights and liabilities of at least one party, since cross-

claims against Titan Contracting remained pending in the underlying action. Appellants timely filed a response, and respondent filed a reply.

Under former NRCP 54(b), certification is not available unless the order resolves at least one claim for relief in a multiple claim action, or resolved the rights and liabilities of at least one party.¹ In addition, certification is improper when the claims are so closely related that this court, in deciding the issues appealed, would necessarily decide important issues pending below.² Since cross-claims remain pending against Titan Contracting, it has not been entirely dismissed as a party from the action, and NRCP 54(b) certification was proper only if the order resolved at least one extricable claim for relief in a multiple claim action.

In their response, appellants argue that their “claim” for consequential damages against all defendants has been fully resolved, with only issues relating to their “claim” for direct damages remaining. An item of damage, however, is not a “claim” separate and distinct from the main allegations of the complaint, and the resolution of liability for one item of damage but not another does not render the underlying claim finally resolved.³ Moreover, this court must determine whether the

¹Former NRCP 54(b); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

²Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 797 P.2d 978 (1990); Hallicrafters Co. v. Moore, 102 Nev. 526, 728 P.2d 441 (1986).

³See United States v. Burnett, 262 F.2d 55, 58-59 (9th Cir. 1958), cited in Mid-Century Ins. Co. v. Cherubini, 95 Nev. 293, 295, 593 P.2d 1068, 1070 (1979).

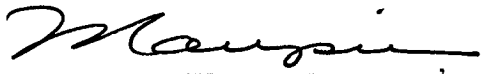
certification as a whole was proper, because all portions of the order properly certified as final are appealable, whether appellants intend to challenge each portion or not. Thus, even though appellants assert that in this appeal they intend to raise only issues regarding consequential damages, the district court apparently purported to certify as final its resolutions of all of appellants' claims against Titan Contracting, including those involving requests for both direct and consequential damages, and it is each of those claims that must be examined here.

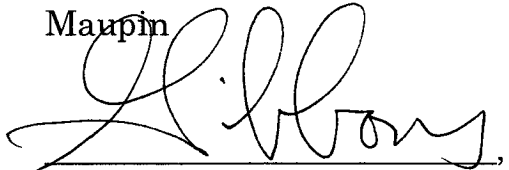
In this case, appellants' claims all arose out of a March 13, 2001 steam turbine failure. Although appellants asserted at least three separate theories of liability against Titan Contracting and the other defendants—based on contract, negligence, and strict liability theories—each theory relies on the same factual assertion that the defendants' defective workmanship and/or materials caused the turbine failure. And while appellants' claims against Titan Contracting have been dismissed, appellants' contract warranty claims against some of the other defendants remain. Further, those remaining defendants have pending negligence, indemnity, and contribution cross-claims against Titan Contracting that also arise out of the same set of facts. Thus, the items certified as final are inextricably interrelated with the remaining claims, and are so closely intertwined that the remaining claims would necessarily be impacted by the resolution of this appeal.⁴ Consequently, we conclude that reviewing the matter at this stage of the proceedings could result in piecemeal litigation, defeating the purpose of NRCP 54(b). Accordingly, as the

⁴Mallin, 106 Nev. 606, 797 P.2d 978.

purported NRCP 54(b) certification was improper and is ineffective to invoke this court's jurisdiction, we dismiss this appeal.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Nancy M. Saitta, District Judge
William F. Buchanan, Settlement Judge
Barron, Vivone & Pruitt
Bruckmann & Victory, LLP
Lincoln, Gustafson & Cercos
Thacker, Bickel, Hodskins & Thacker, LLP
Clark County Clerk