

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RUTH FADDISH, Individually :  
and as executrix of the :  
estate of JOHN FADDISH, :  
deceased, :

Plaintiff, :

v. :

CBS CORPORATION, ~~ET AL.~~, :

Defendants. :

CONSOLIDATED UNDER  
MDL 875

CIVIL ACTION  
NO. 09-70626

Transferred from the Southern  
District of Florida

**FILED**

APR 29 2011

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

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By \_\_\_\_\_ Dep. Clerk

O R D E R

**AND NOW**, this **28th** day of **April 2011**, it is hereby **ORDERED**

that Defendant General Electric's Motion to Alter of Amend  
Judgment to Certify Finality under Federal Rule of Civil  
Procedure 54(b) (doc. no. 222) filed on February 22, 2011 is  
**DENIED.**<sup>1</sup>

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<sup>1</sup> Defendant General Electric Company ("GE") moves for a certification of finality under Federal Rule of Civil Procedure 54(b). This Court granted summary judgment in GE's favor on the grounds that it is entitled to immunity under the government contractor defense as set forth in Boyle v. United Technologies Corporation, 487 U.S. 500, 512 (1988). Plaintiff has opposed GE's motion, stating that GE has failed to meet the showing required by Rule 54(b).

Rule 54(b) states that a district court may "direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). A district court must first make a determination of finality, meaning that it is "an ultimate disposition of an individual claim in the court of a multiple claim action." Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8 (1980) (internal citations omitted). Then, a district court serves as a "dispatcher" of claims to appeal and,

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in doing so, must "take into account judicial administrative interests as well as the equities involved." Id. The central "judicial administrative interest[]" to be considered is to avoid "piecemeal appeals" and ensure that "no appellate court would have to decide the same issues more than once even if there were subsequent appeals." Id. Therefore, it is generally accepted that a claim is appropriate for a Rule 54(b) certification if the grounds for the potential appeal are not applicable to any other claims, even if there is some factual overlap between the immediately appealable and potentially appealable claims. Carter v. City of Philadelphia, 181 F.3d 339, 346 (3d Cir. 1999).

As to the first step, it is clear that the Court's grant of summary judgment in favor of GE was an "ultimate disposition" of Plaintiff's claims against it, as the Court found that "GE's state law duty to warn was displaced by the [United States] Navy's directives." (Mem. Op., doc. no. 202 at 23.)

Taking into account the concerns of judicial economy and fairness to the parties, the Court finds that a 54(b) certification of finality is not appropriate at this stage in the proceedings. First, in its "dispatching" capacity, the Court finds that there are two overlapping issues, the government contractor defense and causation, that could give rise to piecemeal appeals in the instant case. GE argues that its claim is severable because it is the only defendant that prevailed on the government contractor defense at the summary judgment stage. (Def.'s Resp., doc. no. 225, at 10.) However, GE recognizes that other defendants have plead the government contractor defense as an affirmative defense, and they may invoke the government contractor defense at trial. (Id.) Therefore, there is a risk of piecemeal appeals on the application of the government contractor defense to the instant case. Further, if Plaintiff were to appeal at this juncture, GE would have the opportunity to cross-appeal on this Court's denial of its summary judgment motion on causation grounds. (See Mem. Op., doc. no. 202 at 14) (finding that "a genuine issue of material fact exists as to whether GE's failure to warn Mr. Faddish of the hazards of asbestos was a substantial contributing cause to his asbestos-related injuries" but holding that GE is immune in the instant case because the United States Navy exercised its discretion regarding warnings.) Therefore, piecemeal appeals could occur on both the government contractor defense and causation in the instant case. While the Court recognizes that complete severability of issues is not necessary, Carter, 181 F.3d at 346, the significant overlap of factual and legal issues in this case

AND IT IS SO ORDERED.



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EDUARDO C. ROBRENO, J.

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weigh heavily against certifying finality with respect to GE.

Finally, the equities involved weigh against a certification of finality at this juncture, because of the multi-district litigation posture of the case. Plaintiff notes that "[t]he case is presently ready for trial as to the remaining defendants" and that Plaintiff is "in the process of preparing a Motion for Suggestion of Remand" so that the case can be remanded back to the Southern District of Florida for trial. (Pl.'s Resp., doc. no. 224, at 4.) If the Court entered a Rule 54(b) order, Plaintiff would be forced to chose between remaining in the Eastern District of Pennsylvania to pursue appeal and consenting to trial here, or foregoing appeal and moving for the remand and trial of the case in the transferor court. On the defendant's side, GE states that the issue of the government contractor defense is "one of federal law and is of some importance" and that GE is "entitled to clear finality and a complete termination of its presence on the docket." (Def.'s Mot., doc. no. 222, at 2.) GE's desire for finality is by no means trivial, but is outweighed by Plaintiff's right to have her remaining claims tried in the transferor court in a timely fashion.

Under these circumstances, GE's Motion to Certify Finality under Rule 54(b) is denied.