

retaliation for the vigorous political opposition of Plaintiff John P. Morris ("Morris") to Hoffa in the 1996 and 1998 International elections and to suppress such opposition going forward. On December 28, 1999, the Court granted Plaintiffs' Motion for a Preliminary Injunction, preliminarily enjoining Defendants from exercising the emergency trusteeship over Local 115 and ordering Defendants to return control of the Local to its duly elected officers. The Court concluded that Plaintiffs had demonstrated a reasonable likelihood of proving that the information available to Hoffa at the time he decided to impose the emergency trusteeship was insufficient to provide him with a good faith belief in the existence of an emergency. On December 30, 1999, the United States Court of Appeals for the Third Circuit stayed the injunction Order pending appeal. During the pendency of the appeal, the International conducted an internal union hearing upon the matter of the trusteeship, and Hoffa, based upon the recommendation of the hearing panel ("Panel"), issued a decision to continue the trusteeship. On June 12, 2000, the Third Circuit dismissed the appeal as moot and vacated the preliminary injunction Order. Defendants subsequently moved for summary judgment. During the pendency of the Motion, the International conducted elections for officers of Local 115 and on June 13, 2001 dissolved the trusteeship when the officers were sworn into their offices.

On October 12, 2001, this Court issued an Order granting in part and denying in part Defendants' Motion. The Court dismissed all claims for equitable relief as moot and granted summary judgment in favor of Defendants as to the maintenance of the trusteeship from May 31, 2000 until June 13, 2001 (Count I), and as to Count II. The Court denied summary judgment as to the emergency trusteeship period in Count I from November 15, 1999 to May 31, 2000. The Court further allowed the parties to seek entry of final judgment pursuant to Federal Rule of Civil Procedure 54(b).¹

II. Final Judgment Under Rule 54(b)

Rule 54(b) of the Federal Rules of Civil Procedure is designed to remedy the harsh effects that sometimes result from a delayed appeal in litigation presenting multiple claims or multiple parties. Waldorf v. Shuta, 142 F.3d 601, 610 (3d Cir. 1998). The rule provides in pertinent part:

When more than one claim for relief is presented in an action, . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims . . . only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Fed. R. Civ. P. 54(b). If such an order is properly entered, the certified judgment may be appealed to the Court of Appeals, subject

¹The Court noted that, "This Court's disposition of Defendants' Motion may warrant entry of final judgment qualifying for immediate appeal pursuant to Federal Rule of Civil Procedure 54(b). However, it is the burden of the parties seeking judgment under Rule 54(b) to demonstrate that such action is appropriate and just." (Mem. Op. 10/12/01 at 24-25.)

to the scrutiny of the Rule 54(b) determination. Sussex Drug Prods. v. Kanasco, Ltd., 920 F.2d 1150, 1153 (3d Cir. 1990). The district court must address two distinct issues. First, the court must determine whether "it is dealing with a 'final judgment' . . . in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 7 (1980). If the first inquiry is met, the district court must exercise its discretion to determine that the matter is "ready for appeal . . . taking into account judicial administrative interests as well as the equities involved." Id. at 8; Sussex Drug Prods., 920 F.2d at 1153.

A final judgment is "an ultimate disposition of an individual claim entered in the course of a multiple claims action." Sears, Roebuck & Co. v. Mackay, 351 U.S. 427, 436 (1956); see also Gerardi v. Pelullo, 16 F.3d 1363, 1368 (3d Cir. 1994) ("Finality is defined by the requirements of 28 U.S.C. § 1291, which are generally described as 'ending the litigation on the merits and leaving nothing for the court to do but execute the judgment.'" (citations omitted). The district court is not empowered to enter judgment on a decision which is not final. Bogosian v. Gulf Oil Corp., 561 F.2d 434, 440 (3d Cir. 1977). Generally, finality occurs when ending "the litigation on the merits and leaving nothing for the

court to do but execute the judgment." Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 275 (1988).

In this case, the Court determines that the following three claims are final under the definition of finality of Rule 54(b):

1. Count II, which brought free speech claims pursuant to Sections 101 and 609 of the LMRDA, 29 U.S.C. §§ 411, 529, as to all Plaintiffs.²

2. Count I as it relates to the maintenance of the trusteeship, from the period beginning May 31, 2000, as to all Plaintiffs.³

3. Count I as it relates to the emergency trusteeship, from the period November 15, 1999 to May 31, 2000, as to Plaintiff John Morris only.⁴

The Court concludes that the judgment as to these three claims is final. With respect to the first two claims, the Court has reached the ultimate disposition of those claims as a result of

²The Court granted summary judgment in favor of Defendants on this claim. Defendants seek final judgment as to all Plaintiffs under Rule 54(b). Plaintiffs, with the exception of John Morris, oppose entry of final judgment on this claim.

³The Court granted summary judgment in favor of Defendants on this claim. Defendants seek final judgment under Rule 54(b). Plaintiff John Morris also seeks final judgment as to this claim against himself only. The remaining Plaintiffs oppose entry of final judgment.

⁴Plaintiff seeks entry of final judgment with respect to Plaintiff John Morris' remaining claim for damages to the Local associated with the temporary trusteeship. Defendants do not oppose this request.

granting summary judgment in favor of Defendants. The litigation of these claims has been concluded on the merits, leaving nothing more for this Court to do aside from executing judgment. With respect to the third claim, finality has also been reached. Although the Court denied Defendants' Motion for Summary Judgment as to the temporary trusteeship as to all Defendants, it also held that Plaintiffs could not seek personal damages and were limited to claiming damages on behalf of the Local under the Third Circuit's recent opinion in Ross v. Hotel Employees & Restaurant Employees Int'l Union, 266 F.3d 236, 249-50 (3d Cir. 2001). The parties agree that because Plaintiff Morris is no longer a member of the Local, he lacks standing to pursue a claim with respect to the temporary trusteeship because such damages claim would be limited to damages on behalf of the Local. The Court therefore agrees with the parties that with respect to Plaintiff John Morris, the Court has rendered an "ultimate disposition" within the meaning of the term finality under Rule 54(b).

Having concluded that the disposition of these three claims are all concluded and that they are "final" under the first part of the analysis of Rule 54(b), the Court next must determine whether "there is no just reason for delay." In performing this inquiry, the Court must balance judicial administrative interests, such as the federal policy against piecemeal litigation, with the equities involved. Curtiss-Wright Corp., 466 U.S. at 8; Carter v. City of

Philadelphia, 181 F.3d 339, 346 (3d Cir. 1999). All or some of the following factors may bear on the propriety of certification of a judgment as final under Rule 54(b): (1) the relationship among the adjudicated claims; (2) possibility that the need for review might or might not be mooted by future developments in the district court; (3) possibility that the reviewing court might be obliged to consider the same issue a second time; (4) presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; and (5) delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, etc. Allis-Chalmers Corp. v. Philadelphia Elec. Co., 521 F.2d 360, 365 (3d Cir. 1975).

Considering all of the relevant factors, the Court concludes that there is no just reason for delay in issuing final judgment on these claims. The issues presented by the separate components of Count I relating to the pre-hearing emergency and the post-hearing trusteeships are separable, and raise different issues of fact and law.⁵ Moreover, denial of immediate appeal as to the claims

⁵Although the pre-hearing "emergency trusteeship" and the post-hearing "maintenance trusteeship" claims are both contained in Count I of the Complaint, the two portions of the claims are separate. "The line between deciding one of several claims and deciding only part of a single claim is sometimes very obscure." 10 Charles Alan Wright at al., Federal Practice and Procedure § 2657 (3d ed. 1998). Generally, "a complaint asserting only one legal right, even if seeking multiple remedies for the alleged violation of that right, states a single claim for relief." Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 743 n.4 (1976). The Court concludes that although the claims are both part of the same

decided in favor of Defendants presents the danger of duplicative trials: a trial as to the pre-hearing emergency trusteeship and a trial as to the post-hearing permanent trusteeship. Considering these factors, on balance, the interests weigh in favor of entry of final judgment as to the claims decided in favor of Defendants on the motions for summary judgment. See Carter, 181 F.3d at 346-47.

Plaintiffs oppose final judgment on the basis that "future developments are very likely to have an impact on the decided issues . . ." (Pls.' Mem. in Opposition to Mot. of Defs. at 3.) An example of such a future development might be the awarding of the exact same damages on another claim in the litigation. See Sussex Drug Prods., 920 F.2d at 1156 (declining to certify a claim where damages overlapped precisely with those available in other counts). In the instant case, the only claim remaining for trial is a damages claim that pertains to the emergency trusteeship period. Plaintiffs have not identified, and the Court cannot conceive of, a future development that would moot the instant claim.

Accordingly, the Court enters final judgment pursuant to Rule 54(b) with respect to Count II as to all Plaintiffs, the post-hearing portion of Count I as to all Plaintiffs, and the pre-hearing portion of Count I as to Plaintiff Morris.

Count, they are separate claims that are appropriately treated separately for purposes of summary judgment and entry of final judgment under Rule 54(b).

III. Certification for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b)

Defendants next seek certification for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) of four specific issues raised by the Court's summary judgment memorandum pursuant to 28 U.S.C. § 1292(b). Section 1292(b) provides, in pertinent part:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

28 U.S.C. § 1292(b). In order for a district court to certify an issue for interlocutory appeal, all three factors identified in the statute must be satisfied. See Katz v. Carte Blanche Corp., 496 F.2d 747, 754 (3d Cir. 1974). "The decision to certify an order for appeal under § 1292(b) lies within the sound discretion of the trial court and a district court should exercise its discretion mindful of the strong policy against piecemeal appeals." In re Orthopedic Bone Screw Prods. Liab. Litig., MDL Docket No. 1014, 1998 U.S. Dist. LEXIS 8019, at *27 (E.D. Pa. May 5, 1998) (quotations omitted). Certification is appropriate only in exceptional circumstances. Federal Dep. Ins. Corp. v. Parkway Exec. Office Ctr., 1997 U.S. Dist. LEXIS 14939, at *5. The moving party bears the burden of showing that "exceptional circumstances justify a departure from the basic policy against piecemeal

litigation and of postponing appellate review until after the entry of a final judgment." Id.

Defendants first seek certification as to two issues that relate to the Court's interpretation of action taken by the Third Circuit with respect to the preliminary injunction. Specifically, Defendants seek certification as to the following:

1. Whether the Order of the Third Circuit entered June 12, 2000, vacating the District Court's December 28, 1999 Order as moot, became the law of this case with regard to the claim raised by Plaintiffs at Complaint paragraph 69 that "[n]o 'emergency situation' existed . . . within Local 115 . . . for Defendants' imposition of an emergency trusteeship over Local 115."

2. Whether the Order of the Third Circuit entered June 12, 2000, vacating the District Court's December 28, 1999 Order as moot, became the law of this case as to the issue, identified at pages 9 and 10 of the District Court's Memorandum Opinion entered October 15, 2001, of "[w]hether Hoffa imposed the emergency trusteeship in accordance with the IBT constitution."

The Court declines to certify these two issues for interlocutory appeal, because there is no substantial basis for difference of opinion as to these issues. Defendants' basic contention is that the effect of the Third Circuit's order was to determine that there was an emergency, and that the statutory presumption of validity applied with respect to the emergency trusteeship. Defendants argue that the issue of the application of the statutory presumption of validity was a procedural issue that was decided by the Third Circuit. This Court, in denying Defendants' motion for summary judgment with respect to the

emergency trusteeship, did not adopt such an interpretation, and instead recognized that there were genuine issues of material fact as to whether the emergency trusteeship had been properly imposed. Clearly Defendants' interpretation would foreclose the ability of Plaintiffs to seek any damages, regardless of the type, for the emergency imposition of the trusteeship.⁶

There are no substantial grounds for a difference of opinion with respect to these two issues, because there are no authorities that support a different view on the issues. See Fox v. Horn, Civ.Act.No.98-5279, 2000 U.S. Dist. LEXIS 3106, at *5 (E.D. Pa. Mar. 10, 2000). Defendants, moreover, have provided no case law or persuasive reasoning to establish such a basis for different view. The Court understands Defendants' argument to be as follows: in oral argument before the Third Circuit panel in December 1999, Plaintiffs' counsel argued that the effect of failing to sustain the preliminary injunction granted by the district court would be

⁶The Third Circuit held:

The opinion and order appealed from are concerned solely with the propriety of the imposition of an emergency trusteeship prior to hearing. Since the hearing has now been concluded and a decision made by the General President, appellants have moved to dismiss their appeal as moot. We agree that it is. We have considered appellees' memorandum in opposition to the motion . . . but find it unpersuasive.

Morris v. Hoffa, No. 99-2058, 2000 U.S. App. LEXIS 38566, at *2 (3d Cir. June 12, 2000).

to establish the statutory presumption of validity of the trusteeship. Defendants contend that by ruling that the pre-hearing emergency issue was moot, the Third Circuit "resolve[d] the procedural issues regarding the appropriate standard of proof and establishe[d] the presumptive validity of the Local 115 trusteeship for the entire statutory period." (Defs.' Mem. at 8.) This is only true, however, if one interprets the Third Circuit's ruling as having conclusively determined that there was no pre-hearing issue with respect to the existence of an emergency. The Third Circuit, however, made no findings as to the existence of an emergency; rather, it simply held that the appeal of the order of preliminary injunction was moot once the hearing had been held and a permanent trusteeship established. The Third Circuit also made no ruling as to whether the statutory presumption of validity applied to the emergency trusteeship, and instead ruled that in light of the fact that a hearing had been held and a decision made to maintain the trusteeship, the appeal with respect to the temporary pre-hearing trusteeship was moot. There being no basis for Defendants' interpretation of the Third Circuit order, this Court denies Defendants' motion to certify these two issues for interlocutory appeal.

Defendants next seek to certify the following issue for interlocutory appeal:

Whether the Order of the District Court entered October [12], 2001, entering judgment in favor of Defendants upon

Plaintiffs' claims "as to the maintenance of the trusteeship in Count I" of Plaintiffs' Complaint, determines as a matter of law, Defendants' entitlement to judgment in their favor regarding Plaintiffs' damage claims as to the emergency imposition of the trusteeship in Count I of Plaintiffs' Complaint for the time period November 15, 1999 through May 31, 2000.

The Court understands this issue as further challenging this Court's failure to read the Third Circuit's Order as dispositive of the issue regarding the continuation of the case for trial for the emergency trusteeship period. (Defs.' Mem. at 6-8.) Under Defendants' theory, the Third Circuit's Order determined that the statutory presumption applies to the pre-hearing trusteeship, and so summary judgment would be warranted for the same legal reasons that this Court found summary judgment to be appropriate with respect to the post-hearing trusteeship. However, as discussed above, this Court does not interpret the Third Circuit's Order in such a manner, and does not believe there is a substantial basis for difference of opinion in that regard. Defendants have failed to satisfy their burden, as the moving party, to show that "exceptional circumstances justify a departure from the basic policy against piecemeal litigation and of postponing appellate review until after the entry of a final judgment." See Federal Dep. Ins. Corp. v. Parkway Exec. Office Ctr., 1997 U.S. Dist. LEXIS

14939, at *6. The Court denies Defendants' Motion for certification of this issue for interlocutory appeal.⁷

Finally, Defendants seek certification of the following fourth issue for interlocutory appeal:

Whether Plaintiffs have standing to recover any damages on behalf of Local Union 115 for the time period between the November 15, 1999 emergency imposition and the General President's May 31, 2000 decision issued after hearing.

At the threshold, this Court agrees that the question of Plaintiffs' standing is controlling. A controlling issue is one that "would result in a reversal of a judgment after final hearing." Federal Dep. Ins. Corp. v. Parkway Exec. Office Ctr., at *7. In order to determine if an issue presents a controlling question of law, the focus is on whether a different resolution of the issue would eliminate the need for trial. Id. Defendants' position that Plaintiffs' lack standing is determinative, in that an adoption of that position would foreclose the ability of Plaintiffs to seek any damages. Furthermore, there is substantial basis for difference of opinion. The Third Circuit's opinion in Ross v. Hotel Employees & Restaurant Employees International Union, 266 F.3d 236 (3d Cir. 2001) clearly stands for the proposition -

⁷The Court notes that the legal issues associated with this Court's determination that a cause of action for damages associated with the pre-hearing emergency trusteeship can survive notwithstanding the granting of summary judgment as to the post-hearing maintenance trusteeship are inextricably involved in the claims for which the Court granted summary judgment and issued final judgment under Rule 54(b).

undisputed by the parties - that the Plaintiffs may not seek "personal" damages under their Title III claim. However, the Ross decision does not on its face reach the precise issue at stake here - whether the individual Plaintiffs have standing to pursue damages on behalf of the union under the facts in this case. This Court did not precisely reach this issue in deciding the motion for summary judgment because that issue was not previously raised before the Court. However, in denying Defendants' motion for summary judgment as to the Count I claim, the Court implicitly held that Plaintiffs did have standing. The Court nevertheless agrees that in light of the lack of specific case law on the issue and in light of the Third Circuit's decision in Ross, that there is substantial basis for difference of opinion.

Finally, the Court must consider whether allowing an appeal would materially advance the ultimate determination of this case such that it would warrant departing from the normal rule against allowing piecemeal appeals. The Court concludes that allowing an immediate appeal would materially advance the case. The standing issue is a clearly controlling issue the resolution of which determines whether the case can proceed and whether the remaining Plaintiffs can recover the Local's damages. Additionally, in light of this Court's determination that final judgment be entered as to the other claims in the case, the dangers of allowing piecemeal appeals are significantly reduced. In the Court's view, this issue

presents an exceptional circumstance that warrants certification for interlocutory appeal, and so the Court grants the motion as to that issue.

IV. Conclusion

In accordance with the above reasons, the Court grants final judgment as to the following three claims:

1. Count II (free speech) as to all Plaintiffs.
2. Count I (Title III) with respect to the maintenance of the post-hearing trusteeship, as to all Plaintiffs.
3. Count I (Title III) with respect to the emergency pre-hearing trusteeship, as to Plaintiff John Morris.

The Court also certifies the following issue for interlocutory appeal:

Whether Plaintiffs have standing to recover any damages on behalf of Local Union 115 for the time period between the November 15, 1999 emergency imposition and the General President's May 31, 2000 decision issued after hearing.

The Court denies Defendants' Motion for Certification as to the remaining issues. An appropriate Order follows.

4. The following issue of law is **CERTIFIED** for interlocutory appeal pursuant to 28 U.S.C. § 1292(b):

Whether Plaintiffs have standing to recover any damages on behalf of the Local Union 115 for the time period between the November 15, 1999 emergency imposition and the General President's May 31, 2000 decision issued after hearing.

5. Defendants' Motion for Certification is **DENIED** as to all other issues.

BY THE COURT:

John R. Padova, J.