

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

GENERAL ALUM & CHEMICAL )  
CORPORATION, )  
 )  
Plaintiff )  
 )  
v. ) Civ. No. 97-0238-B  
 )  
GENERAL ELECTRIC RAILCAR )  
SERVICES CORPORATION, )  
 )  
Defendant/Third-Party Plaintiff )  
 )  
v. )  
 )  
RESCAR INDUSTRIES, INC., )  
ET AL., )  
 )  
Third-Party Defendants )

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

This action arises out of two chemical leaking incidents in Maine, involving railcars Plaintiff, General Alum and Chemical Corp. (“General Alum”), leased from Defendant, General Electric Railcar Services Corp. (“GE Railcar”). Plaintiff alleges that Defendant agreed to have the railcars lined with a protective material known as Plasite 4100 to enable Plaintiff to transport aluminum sulfate. Because the linings were improperly applied, Plaintiff contends, two of the railcars leaked aluminum sulfate.<sup>1</sup> Defendant filed a Third-Party Complaint against MRCC, Inc. (“MRCC”), Plasite Protective Coatings, Inc. (“Plasite”), and Rescar Industries, Inc. (“Rescar”) for indemnification and/or contribution. By Order dated June 17, 1998, the Court granted a motion brought by Third-Party Defendants MRCC and Rescar to dismiss GE Railcar’s Third-

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<sup>1</sup> The relevant facts of this case are set forth fully in the Court’s Order of June 17, 1998.

Party Complaint for lack of personal jurisdiction.<sup>2</sup> GE Railcar now moves the Court for certification of its June 17, 1998, Order pursuant to Fed. R. Civ. P. 54(b), and a stay of all proceedings in the Court pending the First Circuit’s resolution of the personal jurisdiction issue. For the reasons set forth below, the Court GRANTS Defendant’s motion.

## I. DISCUSSION

Fed. R. Civ. P. 54(b) “permits the entry of judgment, and thus an appeal, on fewer than all the claims in a multi-claim action,” Spiegel v. Trustees of Tufts College, 843 F.2d 38, 42 (1st Cir. 1988), in recognition of the fact that “in some instances it is appropriate to appeal a final decision on some claims before final decisions on all of the claims have been reached.”<sup>3</sup> Consolidated Rail Corp. v. Fore River Railway Co., 861 F.2d 322, 325 (1st Cir. 1988). Notwithstanding Rule 54(b), “there is a long-settled and prudential policy against the scattershot disposition of litigation.” Spiegel, 843 F.2d at 42 (citations omitted). The district court should not enter Rule 54(b) orders routinely, or “as a magnanimous accommodation to lawyers or litigants.” Id. (citations omitted).

The First Circuit has recognized a two-part test for determining whether certification is appropriate under Rule 54(b). First, the court must determine whether the disputed ruling has the

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<sup>2</sup> Third-Party Defendant Plasite took no position as to the Motion to Dismiss filed by MRCC and Rescar, and filed an Answer to GE Railcar’s Third-Party Complaint.

<sup>3</sup> Fed. R. Civ. P. 54(b) provides, in relevant part, as follows:

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

“requisite aspects of finality.” State Street Bank & Trust Co. v. Brockrim, Inc., 87 F.3d 1487, 1489 (1st Cir. 1996) (citations omitted). “To be final, a judgment must dispose of all the rights and liabilities of at least one party as to at least one claim.” Id. (citations omitted). Once a party has satisfied the finality requirement, the court must assess 1) any interrelationship or overlap among the various legal and factual issues involved and 2) any equities and efficiencies implicated by the requested piecemeal review. Id. (citing Credit Francais Int’l, S.A. v. Bio-Vita, Ltd., 78 F.3d 698, 706 (1st Cir. 1996); Kersay v. Dennison Mfg. Co., 3 F.3d 482, 486 (1st Cir. 1993)). “The court’s role becomes that of a ‘dispatcher,’ . . . exercising its discretion to decide which ‘final’ decisions in a multi-claim action should be sent upstairs immediately and which withheld pending resolution of the entire controversy in the district court.” Spiegel, 843 F.2d at 43 (citations omitted). If the court finds that certification of a ruling is appropriate, it should “make specific findings setting forth the reasons for its order.” Id. (citations omitted).

The Court is persuaded that certification of its June 17, 1998, Order under Rule 54(b) is appropriate. First, the Court’s ruling on personal jurisdiction has the “requisite aspects of finality.” See e.g., 10 Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice and Procedure § 2656, at 50-51 (2d ed. 1983) (dismissal for lack of personal jurisdiction may bring a claim within the scope of Rule 54(b)); see also Rodriguez v. Fullerton Tires Corp., 115 F.3d 81, 82 (1st Cir. 1997) (appeal of dismissal of third-party complaint for lack of personal jurisdiction certified under Rule 54(b)); National Gypsum Co. v. Continental Brands Corp., 895 F. Supp. 328, 343-344 (D. Ma. 1995) (entering Rule 54(b) final judgment for party who was dismissed for lack of personal jurisdiction).

The Court is also satisfied that there is “no just reason for delay.” The personal

jurisdiction issue is unrelated to the other issues in the case. Entry of final judgment at this time, therefore, creates no danger that the Court of Appeals will have to consider the same issue twice. In addition, assessing the “equities and efficiencies implicated by the requested piecemeal review,” the Court is persuaded that the balance weighs in favor of certification. In particular, determination of the jurisdictional issue now may prevent a need for a second trial. If Defendant is allowed to appeal the Court’s ruling at this time and is successful, all of the claims involved in this dispute will likely be resolved in a single action. If, in contrast, Defendant is prohibited from appealing now and later successfully appeals, a second action for contribution and/or indemnity will ensue in this Court, involving many of the same factual issues, witnesses, and evidence at issue in this action. The Court acknowledges that a judgment for Defendant in this action could render the need for appellate review of the personal jurisdiction issue moot. The Court finds the possibility of such an outcome, however, outweighed by the possibility that Rule 54(b) certification of the jurisdictional issue will aid the expeditious decision of this case by preventing two successive trials. See e.g., Chamberlain v. Harnischfeger Corp., 516 F. Supp. 428, 430-31 (E.D. Pa. 1981) (certifying dismissal of one of two defendants for lack of personal jurisdiction in personal injury/products liability action despite possibility that judgment for plaintiff against remaining defendant would make liability of dismissed defendant moot); see also Ruston Gas Turbines, Inc. v. Donaldson Co., 9 F.3d 415 (5th Cir. 1993) (appeal of dismissal of third-party claim for contribution or indemnity for lack of personal jurisdiction certified under Rule 54(b)); Rodriguez, 115 F.3d at 82 (same).

## II. CONCLUSION

The Court, therefore, GRANTS Defendant's Motion for Rule 54(b) Certification of the Court's June 17, 1998, Order, and a Stay of all proceedings in this Court pending resolution of the personal jurisdiction issue in the First Circuit Court of Appeals.

SO ORDERED.

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MORTON A. BRODY  
United States District Judge

Dated this 12th day of August, 1998.