

**Pedro P. TENORIO**  
vs.  
**Carlos S. CAMACHO, et al.**

**Civil Action Nos. 85-488  
and 85-507  
Commonwealth Trial Court**

**Decided December 10, 1987**

**1. Civil Procedure - Motions -  
Hearing**

Where parties have submitted memoranda advising the court of the authorities supporting their position on motion, and the facts and the law are sufficiently clear, no hearing is needed on motion.

**2. Civil Procedure - Final  
Judgments - Interlocutory Appeal**  
Certification of an issue for immediate appeal under rule is appropriate only upon an express determination that there is no just reason for delay and such a certificate is not to be granted routinely, but is left to the discretion of the court in the interest of sound judicial administration. Com.R.Civ.P. 54(b).

**3. Civil Procedure - Final  
Judgments - Interlocutory Appeal**  
Only if the moving party presents specific equitable considerations which outweigh the preference for avoiding piecemeal appeals and ensuring prompt resolution of remaining issues should certificate granting immediate appeal be issued. Com.R.Civ.P. 54(b).

**4. Civil Procedure - Final  
Judgments - Interlocutory Appeal**  
The relevant factors the court should take into account on considering a motion for an immediate appeal before disposition of the entire case are: (1) certification would not result in unnecessary appellate

review; (2) the claims finally adjudicated were separate, distinct, and independent of any of the other claims or counter-claims involved; (3) review of these adjudicated claims would not be mooted by any future developments in the case; and (4) the nature of the claims was such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals. Com.R.Civ.P. 54(b).

**5. Civil Procedure - Final  
Judgments - Interlocutory Appeal**  
In determining whether an order dismissing a third-party complaint should be certified for immediate appeal, substantial weight should be given to the fact that the third-party claim is so completely incidental to and dependent upon the principal claim that there can be no recovery upon the third-party claim unless the plaintiff shall prevail on the principal claim and would be moot if the plaintiff did not prevail. Com.R. Civ.P. 54(b).

**6. Courts - Powers**  
Courts should not reach to decide an important and complex issue which, depending upon the disposition of remaining issues, may never actually require resolution.

**7. Civil Procedure - Final  
Judgments - Interlocutory Appeal**  
Third party claims for indemnity for judgments that may never occur should seldom fall within the narrow exception of orders appropriate for certification of the need for immediate appeal. Com.R.Civ.P. 54(b).

**8. Civil Procedure - Final  
Judgments - Interlocutory Appeal**  
Equitable considerations may militate against granting motion for certification for immediate appeal. Com.R.Civ.P. 54(b).

**9. Civil Procedure - Final  
Judgments - Interlocutory Appeal**

An immediate appeal on a third-party indemnity claim that would serve only to delay the trial of the principal claim, without in any way either simplifying or facilitating its future litigation, may be considered to militate against grant of certification, and where parties did not show prejudice to their interests sufficiently compelling to outweigh the policy of preventing piecemeal appeals, there was just reason to delay appeal of an order dismissing parties' third-party complaint. Com.R.Civ.P. 54(b).

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
COMMONWEALTH TRIAL COURT

PEDRO P. TENORIO, et al., ) CIVIL ACTION NO. 85-488  
Plaintiffs, )  
vs. )  
CARLOS S. CAMACHO, et al., )  
Defendants. )

BANK OF SAIPAN, et al., ) CIVIL ACTION NO. 85-507  
Cross-Claimants, )  
Third-Party Plaintiffs )  
and Counter-Claimant, )  
vs. ) ORDER  
CARLOS S. CAMACHO, et al., )  
Cross-Defendant, )  
Third-Party Defendants )  
and Counter-Defendant. )

FACTS

On November 2, 1987 this court ordered that the Third-Party Complaint of Bank of Saipan and Sid Blair against Tokai Bank of California for indemnity and contribution be dismissed for lack of jurisdiction.

Defendants Bank of Saipan and Sid Blair now move for entry of final judgment with respect to the court's order dismissing Tokai Bank of California pursuant to Com.R.Civ.Pro., Rule 54(b).

MOTION CONSIDERED WITHOUT HEARING

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2 Rule 54(b) does not prescribe any procedure for obtaining a  
3 certificate. Indeed, the court may consider whether to issue  
4 such certification sua sponte. Arimizu v. Financial Sec. Ins.  
5 Co., Inc., (Hawaii, App., 1985) 679 P.2d 627, 633; citing  
6 10 Wright, Miller and Kane, Federal Practice and Procedure:  
7 Civil 2d, § 2660 and cases cited therein.

8 [U] The court, as it may consider sua sponte whether to direct  
9 entry of a final judgment at this stage of the case, may also  
10 consider this motion without a hearing. Bank of Saipan and Sid  
11 Blair have submitted a memorandum of points and authorities in  
12 support of their motion for entry of judgment which is  
13 sufficient in advising the court as to the authorities  
14 supporting their position. In this case, the court finds that  
15 the facts and the law are sufficiently clear and finds that  
16 there is no need for a hearing on this matter. Additionally,  
17 waiting for a hearing date which would be suitable to the court  
18 and all parties concerned would result in unnecessary delay.

DISCUSSION

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20 An order dismissing a third-party complaint is a "judgment"  
21 in the sense that it is a decision upon a cognizable claim for  
22 relief, In Re Fiddler's Woods Bondholders Litigation, (E.D.  
23 Pa., 1984) 594 F.Supp. 594, 596, and it is "final" in the sense  
24 that it is an ultimate disposition of an individual claim  
25 entered in the course of a multiple claims action.

1 Curtiss-Wright Corp. v. General Electric Co., (1980) 446 U.S.  
2 1, 7, 100 S.Ct. 1460, 1464, 64 L.Ed.2d 1.

3 [2.3] Certification of an issue for immediate appeal under  
4 Rule 54(b), however, is appropriate only upon "an express  
5 determination that there is no just reason for delay." A  
6 Rule 54(b) certificate is not to be granted routinely, Page v.  
7 Gulf Oil Co., (5th Cir., 1985) 775 P.2d 1311, 1313 and is left  
8 to the discretion of the court in the interest of sound  
9 judicial administration. Curtiss-Wright Corp. v. General  
10 Electric Co., supra, 446 U.S. at 8, 100 S.Ct. at 1465. Only if  
11 the moving party presents specific equitable considerations  
12 which outweigh the preference for avoiding piecemeal appeals  
13 and ensuring prompt resolution of remaining issues should a  
14 Rule 54(b) certificate be granted. Id., at 5, 8, 100 S.Ct. at  
15 1463, 1465.

16 [4] The Supreme Court in Curtiss-Wright found that the relevant  
17 factors the court should take into account on considering a  
18 Rule 54(b) motion are:

19 "... that certification would not result in  
20 unnecessary appellate review; that the  
21 claims finally adjudicated were separate,  
22 distinct, and independent of any of the  
23 other claims or counterclaims involved; that  
24 review of these adjudicated claims would not  
25 be mooted by any future developments in the  
26 case; and that the nature of the claims was  
27 such that no appellate court would have to  
28 decide the same issues more than once even  
29 if there were subsequent appeals."  
30 Curtiss-Wright, Id., at 5-6, 100 S.Ct. at  
31 1463-1464.

1 In applying these factors to the present case, this court  
2 concludes that the interests of sound judicial administration  
3 would not be advanced by permitting Bank of Saipan and Sid  
4 Blair to take an immediate appeal from the order dismissing  
5 their third-party complaint.

6 [5] The factor in this case which weighs most heavily against  
7 allowing an immediate appeal is that Bank of Saipan and Blair's  
8 claim against Tokai Bank of California will be moot if Bank of  
9 Saipan and Blair prevail in the primary action. In determining  
10 whether an order dismissing a third-party complaint should be  
11 certified for appeal under Rule 54(b), "substantial weight"  
12 should be given to the fact that the third-party claim is "so  
13 completely incidental to and dependent upon the principal claim  
14 that there can be no recovery upon the third-party claim unless  
15 the plaintiff shall prevail on the principal claim."  
16 Panichello v. Pennsylvania Railroad Co., (3d Cir., 1958)  
17 252 F.2d 452, 455.

18 [6.] Similarly, the court in United States Fire Ins. Co., v.  
19 Smith Barney, Harris Upham Co., (8th Cir., 1983) 724 F.2d 650,  
20 652, cited the "grave concern of mootness" as a factor  
21 militating against permitting immediate appeal from the  
22 dismissal of a third-party complaint. Courts should not reach  
23 to decide an important and complex issue which, depending upon  
24 the disposition of remaining issues, may never actually require  
25 resolution. In Re Fiddlers Woods, supra, 594 F.Supp. at 597.

1 Third party claims for indemnity for judgments that may never  
2 occur should seldom fall within the narrow exception of  
3 Rule 54(b). United States Fire Ins. Co. v. Smith Barney,  
4 supra, 724 F.2d 650, 653.

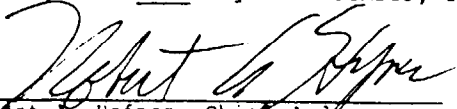
5 [8.9] Equitable considerations likewise militate against granting  
6 Bank of Saipan and Blair's motion for certification.  
7 Permitting an immediate appeal on a third-party indemnity claim  
8 would serve only to delay the trial of the principal claim  
9 without in any way either simplifying or facilitating its  
10 future litigation. Luckenbach Steamship Co. v. Muehlstem and  
11 Co., (2nd Cir., 1960) 280 F.2d 755, 758.

12 As the court noted in Panichella v. Pennsylvania Railroad  
13 Co., supra, 252 F.2d at 455, "this case bristles with  
14 considerations which reinforce the normal rule."

15 Bank of Saipan and Blair have not shown prejudice to their  
16 interests sufficiently compelling to outweigh the policy of  
17 preventing piecemeal appeals and ensuring prompt disposition of  
18 the remaining issues. Accordingly, this court concludes that  
19 there is just reason to delay appeal of the order dismissing  
20 Bank of Saipan and Blair's third-party complaint.

21 Based on the foregoing, Bank of Saipan and Blair's motion  
22 for entry of final judgment under Rule 54(b) is hereby denied.

23 Dated at Saipan, CM, this 10th day of December, 1987.

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Robert A. Hefner, Chief Judge