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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. 24-0687

MACKENZIE CORINNE HOYER,
JULIANNA PELUSO, ALLANAH
TERRETT, EMILY CARTER,
STEPHANIE KAISER, SUZANNAH
SCARCELLO, ANNA BRYANT,
CHRISTINA WARD, ANDREA
NEWBY, and JANE DOES 1-10

Plaintiffs/Appellants,

v.

CLEARVIEW HORIZON, INC.,
MIKE LINDERMAN, MICHELE
MANNING, JOHN and JANE DOES
1-50,

Defendants/Appellees,

MARSH & McLENNAN AGENCY,
LLC, a foreign limited liability
company (formerly known as
PAYNEWEST INSURANCE, INC.)

Intervenor

**APPELLEES MIKE LINDERMAN
AND MICHELE MANNING'S
MOTION TO DISMISS OR
ALTERNATIVE RULE 7 MOTION
FOR MEDIATION**

Appellees Mike Linderman (“Mr. Linderman”) and Michele Manning (“Ms. Manning”) (collectively “Appellees”) respectfully submit their Motion to Dismiss or Alternative Rule 7 Motion for Mediation (“Motion”). Counsel for Appellants have been contacted and indicate they oppose this Motion.

ANALYSIS

I. The Order Granting Sanctions is not immediately appealable and has not been certified as appealable.

Appellants’ appeal of the Order Granting Sanctions and related Judgment (collectively “Judgment”) is untimely as the Judgment has not been certified as final by the lower court pursuant to Montana Rule of Civil Procedure 54(b). “A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding[.]” Mont. R. App. P. 4(1)(a) (emphasis added). The Judgment here does not determine the rights of all claims in controversy, only the claims against Ms. Manning and Mr. Linderman. Co-Defendant Clearview Horizon, Inc. (“Clearview”) and Intervenor Marsh & McLennan Agency, LLC (“MMA”) remain parties to the action pending a reasonableness hearing on its Stipulated Judgment.

While Plaintiffs and Clearview have requested entry of stipulated judgment, the lower court never entered judgment. (Docs. 64, 65). Rather, the lower court permitted MMA to intervene to contest the reasonableness of the Stipulated Judgment, and the court scheduled a hearing to determine the reasonableness of the

settlement. (Docs. 66, 75). Thus, the Judgment is not final under Montana Rule of Appellate Procedure 4, as the claims against Clearview have not been conclusively resolved.

Furthermore, an order granting sanctions is not enumerated as a final order from which a party may appeal under subsections (2), (3), and (4), of Montana Rule of Appellate Procedure 6. An order granting sanctions is, however, designated as an order that is not readily appealable under Montana Rule of Appellate Procedure 6(5)(e). An order which disposes of fewer than all claims against all parties is also a kind of order which is not immediately appealable. Mont. R. App. P. 6(5)(a). While otherwise unappealable orders under Rule 6(5)(a) may be certified as final for appeal under Montana Rule of Appellate Procedure 6(6), that Rule does not provide for the certification of an order granting sanctions under Rule 6(5)(e). When a general and specific statute conflict in their application, like Rules 6(6) and 6(5)(e), the more specific controls. *In Re U.A.C.*, 2022 MT 230, ¶ 13, 410 Mont. 493, 520 P.3d 295. Therefore, Rule 6(5)(e) would apply and not Rule 6(6).

Even if Rule 6(6) did apply, the Judgment has still not been certified as final, and appeal is therefore still untimely. When the rights of less than all parties have been adjudicated, as in Rule 6(5)(a), Rule 6(6) provides that a court may, in accordance with Montana Rule of Civil Procedure 54(b), direct entry of a final judgment and issue an order of certification explaining the foundations for that decision.

Appellants have never sought nor received such an order certifying the Judgment as final, and thus this issue is not ripe for appeal, and should be dismissed.

II. This appeal is subject to the mandatory mediation requirements of Montana Rule of Appellate Procedure 7.

Should this Court determine this appeal is proper and timely, Appellees alternatively request the Court order mediation pursuant to Montana Rule of Appellate Procedure 7(2)(c). Appellants certify this matter is not subject to mediation, however all “[a]ppeals in actions seeking monetary damages/recovery” are subject to the mandatory appellate alternative dispute resolution procedure. Mont. R. App. P. 7(2)(c). Appellants each sought significant monetary damages in their action in the lower court. Therefore, this matter is subject to the mandatory appellate alternative dispute resolution. Appellees therefore request the Court order mediation.

CONCLUSION

The Judgment is an order granting sanctions in a matter where not all claims have been resolved against all parties, meaning it cannot be appealed pursuant to Montana Rule of Appellate Procedure 6(5)(e) until all claims against all parties have resolved. Even if this Rule were not a complete bar, and certification could be sought under Rule 6(6), the Judgment has still not been certified as final by the lower court pursuant to Montana Rule of Civil Procedure 54(b). Appeal is therefore untimely. Should this Court find the appeal to be timely, because Appellants sought monetary

damages against Appellees, the appeal must proceed through the mandatory appellate alternative dispute resolution under Montana Appellate Rule of Procedure 7. Appellees therefore request this appeal be dismissed, or in the alternative, mediation be ordered.

Respectfully submitted this 5th of December 2024.

HALL BOOTH SMITH, P.C.
*Attorneys for Mike Linderman and
Michele Manning*

/s/Elizabeth L. Hausbeck
Elizabeth L. Hausbeck

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 360 is 735 words, excluding caption, certificate of compliance, and certificate of service.

DATED this 5th day of December 2024.

HALL BOOTH SMITH, P.C.
*Attorneys for Mike Linderman
and Michele Manning*

/s/ Elizabeth L. Hausbeck
Elizabeth L. Hausbeck

CERTIFICATE OF SERVICE

I, Elizabeth L. Hausbeck, hereby certify that I have served true and accurate copies of the foregoing Motion - Dismiss to the following on 12-05-2024:

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Electronically signed by Genevieve Day on behalf of Elizabeth L. Hausbeck

Dated: 12-05-2024