

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARTIS EXCESS LIMITED f/k/a	§
AIG EXCESS LIABILITY	§ No. 539, 2011
INSURANCE INTERNATIONAL	§
LIMITED f/k/a STARR EXCESS	§
LIABILITY INSURANCE	§ Court Below—Superior Court
INTERNATIONAL LIMITED,	§ of the State of Delaware
	§ in and for New Castle County
Third-Party Defendant Below/	§ C.A. No. 09C-01-170
Appellant,	§
	§
v.	§
	§
LUMBERMENS MUTUAL	§
CASUALTY CO.,	§
	§
Third-Party Plaintiff Below/	§
Appellee.	§

Submitted: October 31, 2011
Decided: November 4, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 4th day of November 2011, it appears to the Court that:

(1) The third-party defendant/appellant, Chartis Excess Limited (“Chartis”), filed an appeal from the Superior Court’s January 21, 2011 and August 12, 2011 orders in this insurance coverage case following the entry of the Superior Court’s purportedly “final” order on September 7, 2011. For the reasons that follow, we conclude that the appeal must be dismissed for

the appellant's failure to comply with Supreme Court Rule 42 when filing an appeal from an apparent interlocutory order.

(2) The record before us reflects that, following the filing of Chartis's notice of appeal, the Clerk of the Court issued a notice directing Chartis to show cause why its appeal should not be dismissed for its failure to comply with Rule 42 when taking an appeal from an apparent interlocutory order.

(3) On October 21, 2011, Chartis filed its response to the notice to show cause. In its response, Chartis states that the Superior Court's September 7, 2011 order did not explicitly state that it was the Superior Court's final judgment in the matter. Neither was the order entered as a final judgment pursuant to Superior Court Civil Rule 54(b). Chartis attaches copies of correspondence to its response reflecting that the Superior Court's "three most recent rulings" were "intended to put the matter in a procedural posture for an appeal."

(4) On October 31, 2011, Lumbermens Mutual Casualty Co. filed its reply to Chartis's response to the notice to show cause. Lumbermens takes the position that all matters in the Superior Court have been resolved and, therefore, this appeal should proceed.

(5) Absent compliance with Rule 42, this Court’s jurisdiction is limited to the review of final judgments of trial courts.¹ An order is deemed to be “final” if the trial court has clearly declared its intention that the order be the “final act” in the case.² The record before us reflects that the Superior Court has not “clearly declared” its intention that its September 7, 2011 order be its final act in this case. An appeal to this Court from an apparent interlocutory order is premature absent compliance with Rule 42. In the absence of Chartis’s compliance with Rule 42, we conclude that this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ *Julian v. State*, 440 A.2d 990, 991 (Del. 1982).

² *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).