IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

P. MICHAEL COLEMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION 15-0367-WS-M**
	)	
UNUM GROUP CORPORATION,	)	
	)	
Defendant.	)	

ORDER

This matter is before the Court on the plaintiff's motion for certification of immediate appeal. (Doc. 114). The plaintiff requests the Court to certify its recent order granting the defendant's motion for partial summary judgment as to the plaintiff's bad faith claim. (Doc. 110).

> 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). The Court is not of such an opinion. Assuming without deciding that the first two requirements are satisfied, the third is not. The plaintiff assumes that an immediate appeal would materially advance the ultimate termination of the litigation because it would avoid trial in "piecemeal fashion" – the contract claim in November 2016, the bad faith claim on remand from the Eleventh Circuit following appeal from a final judgment (should the plaintiff prevail). (Doc. 114 at 5). If the plaintiff is right, every order eliminating a claim satisfies the third requirement of Section 1292(b), because in every such case there is a possibility of reversal of the dismissal order on appeal, necessitating a second

trial. In essence, the plaintiff suggests that the law favors piecemeal appeals in order to avoid piecemeal trials. The law, however, does not favor piecemeal appeals.

"Piecemeal appellate review has a deleterious effect on judicial administration." *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1276 (11th Cir. 2000). Interlocutory appeals "are inherently disruptive, time-consuming, and expensive." *Id*. (internal quotes omitted). "Because permitting piecemeal appeals is bad policy, permitting liberal use of § 1292(b) interlocutory appeals is bad policy." *McFarlin v. Conseco Services, LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004).

The third requirement is satisfied only if interlocutory appeal "would serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin*, 381 F.3d at 1259. "And the answer to that question [raised on interlocutory appeal] must substantially reduce the amount of litigation left in the case." *Id*. That circumstance is not present here. As the Court said in *Williams v. Saxon Mortgage Co*., 2007 WL 4105126 (S.D. Ala. 2007), "[t]his case is on the cusp of being ready for trial now, and an appeal (regardless of its outcome) would delay, not obviate the need for, a trial." *Id*. at *4. And as the Court said in *Gipson v. Mattox*, 511 F. Supp. 2d 1182 (S. D. Ala. 2007), "[a]s it appears that a trial will be necessary on the [contract] clai[m] irrespective of the outcome of [the plaintiff's] appeal of the [bad faith] question, allowing an interlocutory appeal here would do nothing more than delay the trial and invite piecemeal appeals." *Id*. at 1193.

Interlocutory appeal is the "rare exception," *McFarlin*, 381 F.3d at 1264, and the plaintiff "bears the burden of showing that all § 1292(b) prerequisites are satisfied and that this is one of the rare exceptions in which judicial discretion should be exercised to grant this disfavored remedy." *Shedd v. Wells Fargo Bank, N.A*., 2016 WL 4565755 at *3 (S.D. Ala. 2016). The Court is not persuaded that the plaintiff has met his burden or that the Court should exercise its discretion as he seeks.

For the reasons set forth above, the motion for certification of immediate appeal is **denied**.

DONE and ORDERED this 28th day of September, 2016.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE