IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF GEORGIA MACON DIVISION

NORTH AMERICAN SPECIALTY INSURANCE COMPANY,))
Plaintiff,))
v.) CIVIL ACTION NO. 5:10-CV-191 (MTT)
PEN PALS PRODUCTIONS, LLC, et. al,	
Defendants.	,))
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<u>ORDER</u>

This matter is before the Court on Defendant NES Equipment Services

Corporation's Motion for Entry of Final Judgment. (Doc. 97). NES seeks an entry of
default judgment pursuant to Fed. R. Civ. P. 54(b) because the issue of coverage for its
crossclaim against Pen Pals Productions, LLC in the underlying tort action is "completely
severable" from the issue of coverage for the Lamensdorf Defendants' claims against Pen
Pals in the underlying tort action.

Pursuant to Fed. R. Civ. P. 54(b), "[w]hen an action presents more than one claim for relief ... or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." "A district court must first determine that it is dealing with a 'final judgment." *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 7 (1980). "It must be a 'judgment' in the sense that it is a decision upon a cognizable claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action." *Id.* (quoting *Sears*, *Roebuck* &

Co. v. Mackey, 351 U.S. 427, 436 (1956)). After a court finds finality, it must determine

whether there is any just reason for delay. Curtiss-Wright Corp., 446 U.S. at 8.

Here, the Court granted NES' Cross-Motion for Summary Judgment to the extent it

sought a declaration that the Rental Agreement is an "insured contract." (Doc. 95). The

Court's determination that the Rental Agreement is an insured contract was a judgment

because it was a decision upon a cognizable claim for relief. It was final because it

ultimately disposed of the issue of whether Plaintiff North American Specialty Insurance

Company's Commercial General Liability policy provides coverage for NES' crossclaim.

However, the Court finds just reason for delay because the remaining issues in this action

will be brought to trial during the week of August 22, 2011, and the Court expects that all

coverage issues will be resolved shortly. Accordingly, the Motion for Entry of Final

Judgment is **DENIED**.

SO ORDERED, this the 8th day of August, 2011.

S/ Marc T. Treadwell

MARC T. TREADWELL, JUDGE

UNITED STATES DISTRICT COURT

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