

correctness, and (3) if appealed immediately ‘materially advance the ultimate termination of the litigation.’” Id. at 754 (quoting 28 U.S.C. § 1292(b)).

Plaintiff seeks to appeal the order of January 8, 2016, dismissing Counts I, VII and VIII of plaintiff's original complaint with prejudice and the order of November 23, 2016, dismissing all of the counts of plaintiff's amended complaint save two subparts of Count II. Defendants maintain that a resolution of these rulings in plaintiff's favor will not materially advance the ultimate termination of the litigation because any reinstated claim(s) would necessarily be at the pleading stage. Consequently, from defendants' perspective an interlocutory appeal would be a mere first step toward resolution.

In general, interlocutory appeals are not granted from denials of motions to dismiss because it encourages “piecemeal litigation.” Caraballo-Seda v. Municipality of Hormigueros, 395 F.3d 7, 9 (1st Cir. 2005). The primary purpose of § 1292(b) is to expedite the termination of litigation where an immediate appeal would avoid protracted and expensive litigation in the event of either a reversal or an affirmance.

In order satisfy the purpose of § 1292(b), immediate material advancement of the ultimate termination of the litigation must be a likely result from resolution of a controlling question of law. A reversal of all or some of the rulings rendered against plaintiff may well reinstate its claims and return them for further development. But as is evident from the record, such a result would fall far short of providing an avenue that expeditiously leads to final resolution. And an affirmance of all or some of the rulings equally would neither terminate the litigation nor assure an established avenue for immediate resolution of the remaining claims.¹

¹ This state of affairs likewise suggests that plaintiff has failed to identify a controlling question of law, which by definition has the practical effect of saving the court's time and avoiding the consumption of unnecessary litigation expenses by all parties. See e.g. Shevlin v. Phoenix Life

Therefore, plaintiff's motions fail to advance the primary purpose intended by § 1292(b) and they properly have been denied.

s/David Stewart Cercone
David Stewart Cercone
United States District Judge

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Ins. Co., 2015 WL 348552 * 5 (D. N.J. January 23, 2015) ("Controlling' means 'serious to the conduct of the litigation, either practically or legally.' From the practical standpoint, saving the district court's time and the litigants' expenses is 'a highly relevant factor.'" (quoting Katz, 496 F.2d at 755)).