NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 1332

FLORIDA GAS TRANSMISSION COMPANY, LLC

VERSUS

TEXAS BRINE COMPANY, LLC

Judgment Rendered: DEC 22 2016

Appealed from the
Twenty-Third Judicial District Court
In and for the Parish of Assumption, Louisiana
Docket Number 34316

Honorable Thomas J. Kleibert, Jr., Judge Presiding

****

Judy Y. Barrasso
Stephen L. Miles
David N. Luder
Kyle L. Wallace
New Orleans, LA

Counsel for Defendant – Appellant #1
Liberty Insurance Underwriters, Inc.

John P. Wolff, III
Nancy B. Gilbert
Brian T. Butler
Mark T. Assad
Baton Rouge, LA

Counsel for Defendant – Appellant #2
Chubb Custom Insurance Co.

James K. Ordeneaux
Lacey E. Sarver
New Orleans, LA

Counsel for Plaintiff - Appellee
Florida Gas Transmission Co., LLC

James M. Garner
Martha Curtis
Peter L. Hilbert, Jr.
Jeffrey D. Kessler
Neal J. Kling
Leopold Sher
Jeffrey Kessler
New Orleans, LA

Counsel for Defendant - Appellee
Texas Brine Company, LLC

Guidry, J. concurs in the result.

McClendon, J. Concurs.

Bradley C. Myers **Troy J. Charpentier** **Katie D. Bell** **Baton Rouge, LA**	
Eric J. Mayer **Houston, TX**	
Robert Percy, III **Gonzales, LA**	
Christoffer C. Friend **Susan R. Laport** **Lauren E. Godshall** **Heather M. Valliant** **New Orleans, LA**	**Counsel for Defendant - Appellee** **Occidental Chemical Corp.**
Roy C. Cheatwood **Kent A. Lambert** **Adam B. Zuckerman** **Tyler L. Weidlich** **New Orleans, LA**	**Counsel for Defendant - Appellee** **Legacy Vulcan Corp. f/k/a** **Vulcan Materials Company**
Christopher D. Bailey **Matthew J. Randazzo, III** **Shawn A. Carter** **Joshua S. Barnhill** **Lafayette, LA**	**Counsel for Defendants - Appellees** **Browning Oil Company/** **Colorado Crude Company/** **Lorca Corporation**
Joseph L. Shea **Katherine Smith Baker** **Shreveport, LA**	**Counsel for Defendant - Appellee** **Reliance Petroleum Corp.**
Jason M. Cerise **New Orleans, LA**	**Counsel for Defendant - Appellee** **Adams Resources Exploration Corp.**
Ralph S. Hubbard, III **Seth A. Schmeeckle** **Daniel B. Centner** **C. Austin Holliday** **Baton Rouge, LA**	**Counsel for Defendant - Appellee** **St. Paul Fire and Marine Ins. Co.**
Jay M. Lonero **Angie Arceneaux Akers** **Thomas H. Peyton** **Metairie, LA**	**Counsel for Defendant - Appellee** **TIG Insurance Company**
Gary M. Zwain **Paul J. Verlander** **Metairie, LA**	**Counsel for Defendant - Appellee** **Pacific Insurance Co., Ltd.**

Sarah Smith **Kent Adams** **Houston, TX**	**Counsel for Defendant - Appellee** **Westchester Fire Insurance Co.**
Robert J. Young, III **Metairie, LA**	**Counsel for Defendant - Appellee** **Great American Assurance Co.**
Glen Mercer **New Orleans, LA**	**Counsel for Defendants - Appellees** **American Guarantee and Liability Ins. Co./ Zurich Am. Ins. Co./ Steadfast Ins. Co.**
Ingrid M. Kemp **Mary Susan Johnson** **Mandeville, LA**	**Counsel for Defendants - Appellees** **National Union Fire Ins. Co. of Pittsburg, PA/Lexington Ins. Co./ The Insurance Co. of the State of Penn. and AIG Specialty Insurance Company**
Sidney Degan **James Rowell** **New Orleans, LA**	**Counsel for Defendants - Appellees** **Fireman's Fund Insurance Company, Fireman's Fund Insurance Company of Ohio, and National Surety Corp**
John L. Robert, III **Edwin G. Preis, Jr.** **Lafayette, LA**	**Counsel for Defendant - Appellee** **Arch Specialty Insurance Company**
Jake P. Skaggs **Cozen O'Connor** **Houston, TX**	**Counsel for Defendant - Appellee** **Allied World Assurance Company**
Jay M. Lonero **Angie A. Akers** **Thomas H. Peyton** **Metairie, LA**	**Counsel for Defendant - Appellee** **Fairmont Specialty Insurance Co. f/k/a Ranger Insurance Co.**
Gus A. Fritchie, III **McDonald G. Provost** **New Orleans, LA**	**Counsel for Defendants - Appellees** **Hansa Marine Ins. Co. (UK) Limited; Phoenix Assurance, PLC; Sirius Int. Ins. Co.; The Ocean Marine Ins. Co., Ltd.; The Yorkshire Ins. Co., Ltd.; The Northern Assurance Co., Ltd.; Terra Nova Ins. Co., Ltd.; Sphere Drake Ins., PLC; Cornhill Ins.**
Celeste D. Elliott **Anne E. Briard** **New Orleans, LA**	**Counsel for Defendant - Appellee** **Northfield Ins. Co.**

D. Ashbrook Tullis
New Orleans, LA

Counsel for Defendant - Appellee
National Fire Ins. Co. of Hartford

****

BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.

WHIPPLE, C.J.

In this appeal, defendants, Liberty Insurance Underwriter's, Inc. ("Liberty") and Chubb Custom Insurance Company ("Chubb"), challenge the trial court's rulings on summary judgment rendered in favor of their insured, Texas Brine Company, LLC ("Texas Brine"), and certain excess insurers of Texas Brine that provided coverage above the coverage provided by Liberty and Chubb. The March 11, 2015 judgment at issue in this appeal granted motions for summary judgment filed by Texas Brine and the other excess insurers of Texas Brine, purportedly finding that those insurers' policies were exhausted. Additionally, the judgment on appeal granted Texas Brine's motion for partial summary judgment on a coverage issue, finding that the pollution exclusion in Liberty's policy, which was raised by Liberty as a coverage defense, did not bar coverage for the claims and damages alleged by plaintiff, Florida Gas Transmission, LLC ("Florida Gas").

FACTS AND PROCEDURAL HISTORY

The instant litigation is one of several lawsuits arising out of the appearance of a sinkhole, in August of 2012, near Bayou Corne in Assumption Parish, Louisiana. Two pipelines owned and operated by Florida Gas were purportedly damaged as a result of subsidence of the land in the area of the sinkhole. Thereafter, Florida Gas filed this lawsuit against Texas Brine, among others, for damage to its pipelines, contending that Texas Brine was the custodian and operator of a salt mine cavern in the Bayou Corne area, and that its operations caused the cavern to collapse and form the sinkhole. Florida Gas also asserted direct actions, pursuant to the Direct Action Statute, LSA-R.S. 22:1269, against Texas Brine's insurers that provided coverage for the 2012-2013 policy year when

the salt dome collapsed.[1] These insurers named as defendants by Florida Gas provided Texas Brine with a tower of insurance coverage as follows:

	Carrier	**Nature of Coverage**	**Limit**
1.	Zurich American Insurance Company ("Zurich")	Commercial General Liability	$1,000,000
2.	American Guarantee & Liability Insurance Company ("AGLIC")	Umbrella Liability	$15,000,000
3.	Arch Specialty Insurance Company ("Arch")	Excess Liability	$10,000,000
4.	AGLIC	Excess Liability	$35,000,000
5.	Westchester Fire Insurance Company ("Westchester")	Excess Liability	$15,000,000
6.	Liberty Insurance Underwriters Inc. ("Liberty")	Excess Liability	$50,000,000
7.	St. Paul Fire and Marine Insurance Company ("St. Paul")	Excess Liability	$25,000,000
8.	Great American Assurance Company ("GAAC")	Excess Liability	$25,000,000
9.	Chubb Custom Insurance Company ("Chubb")	Excess Liability	$25,000,000

It is undisputed that the insurers providing the first five layers of coverage to Texas Brine paid out their entire policy limits for claims arising from the sinkhole. Accordingly, these Texas Brine insurers, which provided coverage above Liberty, filed motions for summary judgment seeking dismissal of claims asserted against them. Specifically, Arch and Westchester filed motions for summary judgment, asserting that plaintiff Florida Gas's claims against them should be dismissed because they paid their total limits of coverage provided to Texas Brine on

[1]Texas Brine also filed a cross-claim against these defendant insurers, with the exception of Westchester Fire Insurance Company, asserting claims against these insurers for the 2012-2013 policy year as well as other policy periods.

covered claims with respect to the underlying incident.[2] Zurich and AGLIC also filed a joint motion for summary judgment, asserting that the Zurich primary policy and the AGLIC umbrella and excess policies were exhausted. Thus, Zurich and AGLIC sought a declaration that they owed no policy obligations to plaintiff Florida Gas or "to any insured or other person or entity" under these policies and a dismissal with prejudice of "any and all claims" against them with respect to these policies.

Texas Brine filed a similar motion for partial summary judgment, seeking a declaration that the five policies preceding the Liberty excess policy in its multi-layer tower of coverage for the 2012-2013 policy year, namely the Zurich, AGLIC (umbrella), Arch, AGLIC (excess), and Westchester policies, were "exhausted" by payment of "claims covered" under their respective policies. In this motion, Texas Brine further sought a declaration regarding "the application of Louisiana law to all insurance issues in this matter." Additionally, Texas Brine filed another motion for partial summary judgment, seeking a judicial declaration that the "pollution exclusion" in Liberty's insurance policy did not bar coverage for the damages alleged by Florida Gas.[3]

A hearing was conducted on January 23, 2015, as to the portion of Zurich and AGLIC's motion for summary judgment pertaining to the Zurich primary and AGLIC umbrella policies and Texas Brine's motion for partial summary judgment regarding "exhaustion." Following the hearing, the trial court signed a judgment

---

[2]Arch's motion for summary judgment was filed prior to Texas Brine's cross-claim against it. Thus, as filed, Arch's motion did not seek dismissal of all claims asserted against it.

[3]We note that the record before us does not contain Texas Brine's motion for summary judgment regarding the "pollution exclusion," as this pleading was not part of the record designated for this appeal. However, this pleading is part of the record in the companion appeal, Florida Gas Transmission Company, LLC v. Texas Brine, LLC, 2015-1331 (La. App. 1st Cir. ___/____/____), and an order was signed by this court on May 1, 2015, allowing Liberty to cross-reference the appeal record in the companion appeal. Accordingly, this pleading will be considered by this court for purposes of the instant appeal.

on February 10, 2015, granting, in part, Zurich and AGLIC's motion for summary judgment "[r]egarding [e]xhaustion of the Zurich Primary Policy and the AGLIC Umbrella Policy that are subject of the motions." The judgment also granted in part Texas Brine's motion for partial summary judgment, "as to the [a]pplication of Louisiana [l]aw ... as to the exhaustion issue which was before the Court."[4]

A hearing was also held on February 13, 2015, on excess insurers Arch and Westchester's motions for summary judgment; the remaining portion of AGLIC's motion for summary judgment pertaining to exhaustion of the AGLIC excess policy;[5] the remaining portion of Texas Brine's motion for partial summary judgment pertaining to exhaustion of the AGLIC, Arch, and Westchester excess policies in its 2012-2013 tower of coverage; and Texas Brine's motion for partial summary judgment regarding the Liberty "pollution exclusion" clause. Following the hearing, the trial court signed the March 11, 2015 judgment now before us on appeal, granting Texas Brine and the insurers' motions for summary judgment as to exhaustion and Texas Brine's motion for partial summary judgment regarding the Liberty policy's pollution exclusion, finding that the pollution exclusion did not bar coverage to Texas Brine for the damages alleged by Florida Gas.

In response to the March 11, 2015 judgment, Liberty and Chubb filed the instant appeal. Upon the lodging of this appeal, Arch filed a motion to dismiss Liberty and Chubb's appeal herein, contending that the judgment before us is not a final judgment subject to immediate appeal with respect to Arch, because it does not dismiss all claims asserted against Arch and is not designated as final by the

---

[4]These rulings in the February 20, 2015 judgment are the subject of the companion appeal, Florida Gas Transmission Company, LLC v. Texas Brine, LLC, 2015-1331 (La. App. 1st Cir. ___/___/___), also rendered this day.

[5]As previously discussed "AGLIC's motion for summary judgment" was a joint motion filed by AGLIC and Zurich. However, for purposes of this appeal, we will refer to it as "AGLIC's motion for summary judgment" because the judgment at issue in this appeal only pertains to that part of the motion addressing AGLIC's excess insurance policy.

trial court pursuant to LSA-C.C.P. art. 1915(B). Similarly, AGLIC and Zurich jointly filed a motion to dismiss the appeal on the basis that the March 11, 2015 judgment is not final and appealable because it does not dismiss all claims asserted against either of these defendants and is not designated as final pursuant to LSA-C.C.P. art. 1915(B).

Thereafter, this court issued a rule to show cause and ordered a remand of the matter to the trial court for the limited purpose of inviting the trial court to: (1) advise this court in writing that the judgment does not need or warrant a LSA-C.C.P. art. 1915(B) designation; or (2) sign a judgment with a LSA-C.C.P. art. 1915(B) designation; and (3) in the case of a finality designation, provide a *per curiam* to this court addressing why such a determination is proper. By orders dated April 21, 2016, both motions to dismiss the appeal and this court's rule to show cause were referred to the panel to which this appeal was assigned.

Additionally, Liberty, Zurich, AGLIC, and Occidental Chemical Corporation ("Occidental")[6] filed various motions to supplement the record on appeal. These motions were also referred to the panel to which the appeal was assigned by orders dated April 21, 2016.

Accordingly, we will first address the motions to supplement, then the motions to dismiss the appeal and this court's rule to show cause order.

MOTIONS TO SUPPLEMENT BY LIBERTY, ZURICH, AGLIC, AND OCCIDENTAL

Following this court's issuance of the rule to show cause, various parties filed pleadings with the trial court regarding whether the judgment should or should not be designated as final. As these pleadings were filed with the trial court subsequent to the lodging of this appeal, **Liberty** has filed a motion to supplement

[6]Occidental is the owner of the property on which Texas Brine's mining operations were conducted and is another named defendant in this matter.

the record on appeal with these additional pleadings, which address or are relevant to the appealability issues currently before this court. **Liberty** also seeks to supplement the appellate record with a *per curiam* order of the trial court signed on November 3, 2015, wherein the trial court designates the February 10, 2015 and March 11, 2015 judgments as final and provides reasons therefor.[7] As these pleadings and the *per curiam* order are material to the determination of whether this court has subject matter jurisdiction over the instant appeal, we find merit to and grant **Liberty's** motion to supplement.

Zurich and **AGLIC** have also filed a motion to supplement, seeking to supplement the record with another *per curiam* order of the trial court signed in response to this court's rule to show cause regarding appealability. This *per curiam* order is dated November 5, 2015, and, therefore, is not the same November 3, 2015 *per curiam* order that Texas Brine seeks to file into the record. The November 5, 2015 *per curiam* also designates the respective judgments as final and provides similar reasons for the trial court's determinations. For the reasons stated above regarding Liberty's motion to supplement, we likewise hereby grant **Zurich** and **AGLIC's** motion to supplement the record on appeal.

Additionally, a motion to supplement was filed by **Occidental**, seeking to supplement the record in this appeal with its January 15, 2015 memorandum filed with the trial court in response to the motions for summary judgment regarding exhaustion. This memorandum was included in the record for the companion appeal, Florida Gas Transmission Company, LLC v. Texas Brine, LLC, 2015-1331 (La. App. 1st Cir. ___/____/____), but was omitted from the record in the instant appeal. Supplementation at this time will not cause undue delay as the

[7]Despite the language in this court's rule to show cause order directing the clerk of court of the trial court to supplement the appellate record on or before November 12, 2015, with the *per curiam* or amended judgment rendered by the trial court, no such supplementation has been received from the trial court.

memorandum is already included in the record of the companion appeal. Therefore, we hereby grant **Occidental**'s motion to supplement the record on appeal.

MOTIONS TO DISMISS APPEAL FILED BY ARCH, AGLIC, AND ZURICH

Turning next to the motions to dismiss Liberty and Chubb's appeal filed by Arch, AGLIC, and Zurich, as mentioned above, the only stated basis of these motions is that the appeal should be dismissed as it is an appeal of a partial judgment that was not designated as final by the trial court pursuant to LSA-C.C.P. art. 1915(B). However, we note that these motions were filed prior to the issuance of this court's rule to show cause order and prior to the trial court's *per curiam* orders, wherein the trial court designated the judgment before us as final. As the trial court has now designated the March 11, 2015 judgment as final, these motions to dismiss are now moot and, accordingly, are hereby denied as moot.

THIS COURT'S RULE TO SHOW CAUSE ORDER REGARDING APPELLATE JURISDICTION

Although the motions to dismiss the appeal are denied as moot, that does not end this court's inquiry as to whether this court has subject matter jurisdiction over the appeal.

In addition to containing other interlocutory rulings not at issue herein, the March 11, 2015 judgment before us in this appeal states as follows:

> Texas Brine's Motion for Summary Judgment as to the Pollution Exclusion is **GRANTED**, this Court finding that the Pollution Exclusions raised by Liberty Insurance Underwriters, Inc. as an affirmative defense to Florida Gas Transmission Company's claims do not bar coverage for the damages alleged by Florida Gas Transmission Company to its Napoleonville lateral and Chacahoula lateral pipelines.
>
> Arch, AGLIC, and Westchester's Motions for Summary Judgment are **GRANTED** as to the claims of plaintiff Florida Gas under the 2012-2013 excess policies, and Texas Brine's Motion for

Partial Summary Judgment Regarding Exhaustion of the Arch, AGLIC, and Westchester's 2012-2013 excess policies is **GRANTED**.

This court's appellate jurisdiction extends to "final judgments," which are those that determine the merits in whole or in part. LSA-C.C.P. arts. 1841 & 2083; See Van ex rel. White v. Davis, 2000-0206 (La. App. 1st Cir. 2/16/01), 808 So. 2d 478, 483. However, a judgment that only partially determines the merits of an action is a partial final judgment and, as such, is immediately appealable only if authorized under LSA-C.C.P. art. 1915. Rhodes v. Lewis, 2001-1989 (La. 5/14/02), 817 So. 2d 64, 66. Whether a partial judgment is immediately appealable is determined by examining the requirements set forth in LSA-C.C.P. art. 1915 (A) and (B)(1). State, Department of Transportation and Development v. Henderson, 2009-2212 (La. App. 1st Cir. 5/7/10), 39 So. 3d 739, 741. Subpart A of LSA-C.C.P. art. 1915 designates certain categories of partial judgments as final judgments subject to immediate appeal.[8] Subpart B(1) of LSA-C.C.P. art. 1915 provides, in pertinent part, that when a trial court renders a partial summary judgment, it may designate the judgment as a final judgment, subject to immediate appeal, when there is no just reason for delay. However, a trial court's designation of finality is not determinative of this court's jurisdiction. Templet v. State ex. rel. Dept. of Public Safety and Corrections, 2005-1903 (La. App. 1st Cir. 11/3/06), 951 So. 2d 182, 185.

[8]The March 11, 2015 judgment at issue herein does not fall within any of the categories identified in Subpart A of LSA-C.C.P. art. 1915. The judgment does not: (1) dismiss the suit as to any party; (2) grant a motion for judgment on the pleadings; (3) pertain to an incidental demand that was tried separately; (4) adjudicate the issue of liability when that issue has been tried separately; or (5) impose sanctions or disciplinary action. Moreover, while the judgment does grant motions for summary judgment, these motions constitute summary judgments brought under the provisions of LSA-C.C.P. art. 966(E), which authorizes the grant of a summary judgment "dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties." Summary judgments granted pursuant to LSA-C.C.P. art. 966(E) are specifically excluded from the types of partial summary judgments that are immediately appealable under LSA-C.C.P. art. 1915(A) without the need for a designation of finality. See LSA-C.C.P. art. 1915(A)(3).

Additionally, Louisiana courts require that judgments be "precise, definite and certain." Laird v. St. Tammany Safe Harbor, 2002-0045 (La. App. 1st Cir. 12/20/02), 836 So. 2d 364, 365. When a claim is dismissed, it should be evident from the language of the judgment without reference to other documents in the record. Laird, 826 So. 2d at 366; see also Spanish Lake Restoration, L.L.C. v. Shell Oil Company, 2015-0837 (La. App. 1st Cir. 4/18/16) (unpublished opinion).

Applying these legal precepts, we next turn to a discussion of whether this court has subject matter jurisdiction over the instant appeal. For ease of discussion, we separately discuss the three different rulings in the March 11, 2015 judgment that are at issue herein: (1) the grant of Westchester's motion for summary judgment; (2) the grant of Arch's motion for summary judgment, AGLIC's motion for summary judgment as to its excess policy, and Texas Brine's motion for partial summary judgment, in part, all regarding exhaustion; and (3) the grant of Texas Brine's motion for partial summary judgment as to the pollution exclusion.

I. Westchester's Motion for Summary Judgment

The trial court's November 3, 2015 *per curiam* issued in response to this court's rule to show cause order first states that insofar as the March 11, 2015 judgment grants Westchester's motion for summary judgment, it is a final judgment because it resolves all claims against Westchester. The trial court then concludes that a finality designation pursuant to subsection (B) of LSA-C.C.P. art. 1915 was not necessary. On review, we find error in this stated basis in the *per curiam* for maintaining this appeal.

While the trial court's *per curiam* states that the judgment resolves all claims against Westchester, this is not evident from the language of the March 11, 2015 judgment (nor the February 10, 2015 judgment). Specifically, the judgment

contains no decretal language dismissing plaintiff Florida Gas's claims against Westchester with prejudice. The judgment states only that Westchester's motion for summary judgment is granted. While the parties and the court may have intended for the judgment to resolve all claims against Westchester, this result is not evident from, or accomplished by, the language of the March 11, 2015 judgment itself. Therefore, this portion of the March 11, 2015 judgment is not precise, definite, or certain.

Given the lack of decretal language dismissing, with prejudice, all claims against Westchester in these proceedings, the March 11, 2015 judgment is not an immediately appealable partial final judgment under LSA-C.C.P. art. 1915(A)(1), and this court lacks jurisdiction to review the portion of the judgment granting Westchester's summary judgment without a proper LSA-C.C.P. art. 1915(B) finality designation. See Joseph v. Ratcliff, 2010-1342 (La. App. 1st Cir. 3/25/11), 63 So. 3d 220, 224.

II. Arch, AGLIC, and Texas Brine's Motions for Summary Judgment Regarding Exhaustion

Additionally, we likewise conclude that the rulings on Arch's motion for summary judgment, AGLIC's motion for summary judgment in part as to its excess policy, and Texas Brine's motion for partial summary judgment, in part, all regarding "exhaustion" are not precise, definite, or certain.

The crux of Liberty and Chubb's argument on appeal as to the rulings regarding "exhaustion" is that their respective obligations to Texas Brine as excess insurers are only triggered if the underlying carriers have paid for "covered losses" and that sums paid by an underlying carrier for losses not covered under their respective policies do not trigger Liberty and Chubb's excess layers. Liberty and Chubb contend that summary judgment was premature in that issues of fact exist and remain as to whether the underlying payments were made, at least in part, for

non-covered losses. Liberty argues that the trial court erred in ruling that the underlying insurers had exhausted their policy limits **and** that coverage under the policy of Liberty, as the excess insurer providing the next layer of coverage, was now "triggered." Similarly, Chubb argues that the trial court erred in ruling that the underlying insurers exhausted their policy limits and that this erroneous determination "has ramifications on the trigger point" of the next insurance layers.

However, we have reviewed the language of the judgment and, contrary to appellants' arguments, we find no provision contained therein actually declaring or ordering that Liberty's coverage has been triggered or setting forth any determination as to the "trigger point of the next insurance layer." Specifically, we are unable to locate a ruling by the trial court as to whether the payment of non-covered losses, if there were such, applies toward reaching the attachment point for the excess insurers. Moreover, had such a ruling been evident in the judgment, we are also unable to discern a ruling by the trial court as to which payments made by the underlying insurers, in the exhaustion of their respective policy limits, may have been for "covered claims" or for non-covered claims, if any. Accordingly, despite this court's best efforts, we are unable to discern from the language of the judgment precisely what issues have been determined and what effect these coverage rulings may have vis-à-vis a final determination of the various parties' and insurers' respective rights and obligations.

We recognize that the object of an appeal is to give an aggrieved party recourse for the correction of a judgment, and such right is extended not only to the parties to the action in which the judgment is rendered but also to a third party when such party is allegedly aggrieved by the judgment. ANR Pipeline Co. v. Louisiana Tax Com'n, 2008-1148 (La. App. 1st Cir. 10/17/08), 997 So. 2d 92, 101, writ denied, 2009-0027 (La. 3/6/09), 3 So. 3d 484. However, absent the granting

of relief such as dismissal of any claims or any clear and precise adjudication as to the rights and obligations of the various parties, we are unable to determine if Liberty and Chubb are even aggrieved by this portion of the judgment.

Additionally, despite the lack of clear, precise and definitive language in these portions of the March 11, 2015 judgment, to the extent that we are nonetheless able to review the propriety of the trial court's finality designation, after consideration of the Messinger factors,[9] we conclude that the judgment was improperly designated as final pursuant to LSA-C.C.P. art. 1915(B) as to these rulings therein. Specifically, as to the mootness factor considered in a Messinger analysis, we note that Texas Brine has denied the allegations raised against it by Florida Gas, and, moreover, Texas Brine has alleged that other third parties are liable for the damages alleged by Florida Gas. At this stage in the proceedings below, there has been no ultimate determination as to liability in this factually complex case. Thus, there would be no reason to review the arguments of Texas Brine's insurers as raised herein if Texas Brine is ultimately determined after a trial on the merits to not be liable for the damages alleged by Florida Gas. Moreover, issues of fact undisputedly still remain as to precisely when Florida Gas's alleged damages actually occurred and, thus, whether there is coverage available under

---

[9]Where a trial court gives explicit reasons for the certification of a partial judgment as final pursuant to LSA-C.C.P. art. 1915(B), we must determine whether the trial court abused its discretion in designating the judgment as final. Templet, 51 So. 2d at 185. In making this determination, we consider the "overriding inquiry" of "whether there is no just reason for delay," as well as the other non-exclusive criteria trial courts use in making the determination of whether certification is appropriate, known as the Messinger factors, which include:

> (1) The relationship between the adjudicated and the unadjudicated claims;
> (2) The possibility that the need for review might or might not be mooted by future developments in the trial court;
> (3) The possibility that the reviewing court might be obliged to consider the same issue a second time; and
> (4) Miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Templet, 951 So. 2d at 185-86, citing R.J. Messinger, Inc. v. Rosenblum, 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122-23.

policies issued prior to the 2012-2013 policy year. If there is coverage under pre-2012 policies, this may preclude the "triggering" of Liberty's or Chubb's policies for the 2012-2013 policy year.

Thus, to the extent that we are able to conduct a Messinger analysis, we are constrained to find error in the trial court's certification of the March 11, 2015 judgment as final for the purpose of allowing immediate appellate review of the grant of Arch's motion for summary judgment, the grant of AGLIC's motion for summary judgment, in part, as to its excess policy, and the grant of Texas Brine's motion for partial summary judgment, in part, regarding exhaustion, because the need for appellate review of these rulings could be rendered moot by further developments in the trial court.

III. Motion for Summary Judgment Regarding the Pollution Exclusion

Finally, in considering the Messinger factors as they relate to the portion of the March 11, 2015 judgment granting Texas Brine's motion for summary judgment regarding the Liberty policy's pollution exclusion and finding that the pollution exclusion did not bar coverage to Texas Brine for the damages alleged by Florida Gas, we must again conclude that the particular circumstances and procedural posture of this matter do not support a conclusion that there is no just reason for delay of appellate review of this ruling. Similar to the above, there would be no reason to review the arguments concerning the applicability of the pollution exclusion in Liberty's policy if Texas Brine is ultimately determined after a trial on the merits to not be liable for the damages alleged by Florida Gas. Additionally, there would be no need to review the applicability of the "pollution exclusion" in Liberty's policy if Liberty prevails on other coverage defenses that it has raised and that remain unresolved. Specifically, Texas Brine has filed a motion for summary judgment seeking a judicial declaration that Liberty's "known loss"

exclusion did not bar coverage for the claims and damages alleged by plaintiff. Based upon the record before this court, this issue remains unresolved, as the hearing on the applicability of the "known loss" exclusion was continued by the trial court on the basis that additional discovery was needed on this issue.

Asserting jurisdiction to review the trial court's determination that one of the exclusions in the Liberty policy did not preclude coverage simply would not end the coverage dispute, and there is nothing in the record to suggest that an appeal of this ruling at this stage of the proceedings best serves the needs of the parties or that other compelling or urgent circumstances exist.[10] See Baumann v. D & J Fill Inc., 2007-1480 (La. App. 1st Cir. 2/8/08) (unpublished opinion). Thus, we likewise conclude that the trial court abused its discretion in certifying the March 11, 2015 judgment as final for the purpose of allowing appellate review of the grant of Texas Brine's motion for partial summary judgment as to the pollution exclusion in the Liberty excess policy.

Accordingly, for the above and foregoing reasons, we must conclude that the trial court abused its discretion in certifying the March 11, 2015 judgment as final for purposes of immediate appeal pursuant to LSA-C.C.P. art. 1915(B). Because the judgment contains only partial rulings, the review of which may be mooted by further developments in the case, and rulings that are not clear, definite and precise and that lack decretal language, this court lacks appellate jurisdiction to review the judgment on appeal.

---

[10]Additionally, we note that the "pollution exclusion" defense was raised by Liberty in its Answer to Florida Gas's petitions, in which it also listed its affirmative defenses. Louisiana Code of Civil Procedure 1915(B)(1) authorizes the trial court to designate as final a partial summary judgment as to one or more "claims, demands, issues, or theories, whether in the original demand, reconventional demand, cross-claim, third party claim, or intervention ... ." Thus, LSA-C.C.P. art. 1915(B)(1) does not provide authority for the court to designate an interlocutory ruling regarding an affirmative defense raised in an answer as a final judgment. See Monterrey Center, LLC v. Education Partners, Inc., 2008-0734 (La. App. 1st Cir. 12/23/08), 5 So. 3d 225, 229 n.5.

CONVERTING THE APPEAL TO AN APPLICATION FOR SUPERVISORY WRITS

We next consider whether this court should convert the appeal of the March 11, 2015 judgment to an application for supervisory writs and review the judgment under our supervisory jurisdiction. While this court has the discretion to convert an appeal to an application for supervisory writs and rule on the writ application, Stelluto v. Stelluto, 2005-0074 (La. 6/29/05), 914 So. 2d 34, 39, there are limitations on this authority.

Under Article 5, §10 of the Louisiana Constitution, courts of appeal have broad supervisory jurisdiction. However, even with such broad power, this court will not act on the merits of a claim not yet acted upon by the lower tribunal. Omega General Const. LLC v. Parish of St. Tammany, 2012-1734 (La. App. 1st Cir. 6/7/13) (unpublished opinion). To the extent that we are unable to ascertain precisely what relief was granted by certain portions of the March 11, 2015 judgment due to its lack of precision and definiteness, a review of the judgment under this court's supervisory jurisdiction could result in this court mistakenly addressing claims upon which the trial court has not yet acted.

Moreover, we further find that under the factors set forth in Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc., 396 So. 2d 878 (La. 1981) (*per curiam*), there is no readily apparent basis warranting that this court exercise supervisory jurisdiction herein. In Herlitz, the Louisiana Supreme Court directed that appellate courts should consider an application for supervisory writs under their supervisory jurisdiction, even though relief may be ultimately available to the applicant on appeal, in such circumstances where the trial court judgment was arguably incorrect, a reversal would terminate the litigation (in whole or in part), and there was no dispute of fact to be resolved.

In the instant case, as discussed above, a reversal of the trial court's judgment insofar as it grants the "exhaustion" or "pollution exclusion" motions for summary judgment would not terminate the litigation, in whole or in part. Herlitz, 396 So. 2d 878. Moreover, we note that as to the "exhaustion" rulings in the trial court's March 11, 2015 judgment, both Liberty and Chubb filed applications for supervisory writs with this court, which were denied. Florida Gas Transmission Company, LLC v. Texas Brine Company, LLC, 2015 CW 0450 (La. App. 1st Cir. 6/5/15), and Florida Gas Transmission Company, LLC v. Texas Brine Company, LLC, 2015 CW 0454 (La. App. 1st Cir. 6/5/15). Liberty further sought review from the Louisiana Supreme Court through supervisory writs, and that relief was likewise denied. Florida Gas Transmission Company, LLC v. Texas Brine Company, LLC, 2015-CC-1311 (La. 10/2/15). Additionally, as to the "pollution exclusion" issue, we are unable to find that the interest of justice is best served by converting the appeal to an application for supervisory writs, as the record before us does not contain any opposition by Liberty to Texas Brine's motion for partial summary judgment regarding the "pollution exclusion" clause.[11] Accordingly, for these reasons, we decline to convert the appeal of the March 11, 2015 judgment to an application for supervisory writs.

CONCLUSION

For the above and foregoing reasons, the motions to supplement filed by Liberty, Zurich, AGLIC, and Occidental are hereby granted. Additionally, the motions to dismiss the appeal filed by Arch, AGLIC, and Zurich are hereby denied as moot. Moreover, we find that the instant appeal filed by Liberty and Chubb is improper, as having been taken from a judgment lacking proper decretal language

[11]While there is some indication in the record for the companion appeal that an opposition may have been filed, inasmuch as it is not part of the appellate records, it is not available for our review.

and further as taken from a partial judgment improperly certified as final and subject to immediate appeal. Therefore, the appeal by Liberty and Chubb is dismissed *ex proprio motu* for lack of appellate jurisdiction. Costs of this appeal are assessed equally to appellants, Liberty Insurance Underwriters, Inc. and Chubb Custom Insurance Co.

LIBERTY INSURANCE UNDERWRITERS, INC.'S MOTION TO SUPPLEMENT GRANTED; ZURICH AND AGLIC'S MOTION TO SUPPLEMENT GRANTED; OCCIDENTAL'S MOTION TO SUPPLEMENT GRANTED; ARCH'S MOTION TO DISMISS DENIED AS MOOT; AGLIC AND ZURICH'S MOTION TO DISMISS DENIED AS MOOT; APPEAL DISMISSED.