

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

GUSTAVE J. LABARRE JR., RAMONA H.
TALBOT, HOWARD J. DUPRE III, GAIL
D. BOUDREAUX, FLOYD A. LABARRE,
MARLENE L. FOLSE, CHERYL D.
DAIGLE, HENRY R. LAWES JR.,
SIDNEY J. HERNANDEZ, JUNE D.
BOUCHEREAU, LOUIS P. LEBLANC JR.,
PIERRE F. V. DELABARRE IV, MARY
G. DELABARRE, KATHERINE D.
LABARRE, ANDRE P. V. DELABARRE,
GILBERT J. DUPRE JR., GRANT J.
DUPRE, GRANTLYN D. WHEELER, ELENA
R. LEBLANC, HELEN H. SHAW, ANITA
H. WILLIAMS, GERTRUDE L. LANDRY,
LYDIA L. SHAVERS, MERRILL L.
CORNAY, HARRY J. SIMONEAUX SR.,
HARRY J. SIMONEAUX JR., AMY
SIMONEAUX, LYLE T. SIMONEAUX,
JOIE A. SIMONEAUX, SIMONE S.
LAWSON, CHRISTOPHER A. SIMONEAUX,
GREGORY J. DUPRE, AUGUSTA L.
RIFFERT, ALBERT H. LEBLANC JR.,
MARIA CARMEN DELABARRE, LIZARRAGA
ENTERPRISES, LLC

NO. 2017 CW 0638
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VERSUS

TEXAS BRINE COMPANY, LLC AND
GEORGIA GULF CHEMICAL & VINYLs,
LLC

OCT 31 2017

In Re: On motion of Texas Brine Company, LLC to dismiss, 23rd
Judicial District Court, Parish of Assumption, No.
30650.

BEFORE: GUIDRY, PETTIGREW AND CRAIN, JJ.

MOTION TO DISMISS GRANTED; WRIT APPLICATION DISMISSED. The March 1, 2017 judgment at issue herein, which granted partial summary judgment in favor of the defendant/third-party plaintiff, Texas Brine Company, LLC, on the duty to defend is an interlocutory judgment unless designated by the trial court as a final judgment after an express determination that there is no just reason for delay. See La. Code Civ. P. arts. 1915(B)(1) and 966(E). The trial court did not designate the March 1, 2017 judgment as a final judgment in accordance with La. Code Civ. P. 1915(B)(1); therefore, that judgment is interlocutory and is reviewable under this court's supervisory jurisdiction. The third-party defendant and relator herein, Indian Harbor Insurance Company, filed notice of intent to seek a supervisory writ from the March 1, 2017 judgment. The trial court signed an order setting a return date for April 20, 2017. Accordingly,

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under Rule 4-3 of the Uniform Rules of the Louisiana Courts of Appeal, Indian Harbor needed to file a writ application seeking supervisory review of the March 1, 2017 judgment granting partial summary judgment in favor of Texas Brine on the duty to defend issue by April 20, 2017; however, Indian Harbor did not do so, but instead filed a motion for new trial. A motion for new trial can be taken from a final judgment, not an interlocutory judgment. See **Allstate Ins. Co. v. Mohamadian**, 2009-1126 (La. App. 1st Cir. 2/17/10), 35 So.3d 1118, 1121. Because the March 1, 2017 judgment granting partial summary judgment in favor of Texas Brine on the duty to defend is interlocutory, a motion for new trial is not the proper procedural method to seek review of that ruling. Therefore, the motion to dismiss filed by the defendant/third-party plaintiff, Texas Brine Company, LLC, is granted. The instant writ application filed by the relator, the third-party defendant, Indian Harbor Insurance Company, is dismissed as untimely pursuant to Rule 4-3 of the Uniform Rules of the Louisiana Courts of Appeal.

JTP
WJC
JMG

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DEPUTY CLERK OF COURT
FOR THE COURT