

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5893	DATE	12/11/2006
CASE TITLE	Jaffe vs. Household Int'l, Inc. et al.		

DOCKET ENTRY TEXT

Before the Court is defendants' motion pursuant to 28 U.S.C. § 1292(b) for certification of an appeal of this Court's Memorandum Opinion and Order of April 26, 2006 [doc. no. 503]. For the following reasons, the Court denies the motion.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

To certify an appeal of an interlocutory order, a district court must find that the order presents 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." 28 U.S.C. § 1292(b); *In re Ford Motor Co., Bridgestone/Firestone N. Am. Tire, LLC*, 344 F.3d 648, 653 (7th Cir. 2003). In other words, "there must be a question of law, it must be controlling, it must be contestable, and its resolution must promise to speed up the litigation." *Ahrenholz v. Bd. of Trs. of the Univ. of Ill.*, 219 F.3d 674, 675 (7th Cir. 2000) (emphasis added). "Leave to appeal an interlocutory order is granted only in exceptional circumstances." *In re Patel*, No. 06 C 2834, 2006 WL 2735380, at *2 (N.D. Ill. Sept. 21, 2006).

Defendants argue that whether *Dura Pharmaceuticals, Inc. v. Broudo*, 125 S. Ct. 1627, 1634 (2005), raised the pleading bar for loss causation in the Seventh Circuit is a controlling question of law. "[A] growing number of decisions have accepted the rule that a question is controlling, even though its decision might not lead to reversal on appeal, if interlocutory reversal might save time for the district court, and time and expense for the litigants." *Johnson v. Burken*, 930 F.2d 1202, 1206 (7th Cir. 1991) (quotation omitted).

In this case, an interlocutory reversal will not save time for this Court or time and expense for the litigants. It will only serve as an impediment to the ultimate termination of this case. For the litigation in this case will be conducted in the same way no matter how the Seventh Circuit ruled on the matter. Even if the Seventh Circuit were to reverse this Court's ruling which denied defendants' motion to dismiss, it is unlikely that this case will simply go away, but, rather, it merely would proceed with an amendment to the complaint.

Further, as stated in the Court's ruling on the matter, it is clear from the allegations in the complaint that plaintiffs have met the pleading standard under *Dura*, i.e., they have put defendants on notice that they

STATEMENT

were damaged by defendants' purported misrepresentations which required Household International to restate eight years of financial statements because it had overstated its net income by \$386 million during that period. Plaintiffs allege that the price of Household International shares of stock dropped dramatically after the restatements. This is sufficient to allege loss causation under the notice pleading standard which even the *Dura* Court embraced. *See* 125 S. Ct. at 1634. Thus, the Court sees a very low probability of success even if it were to indulge defendants with a certification of the issue for interlocutory review.