

FILED

APR 27 2020

ANGIE SPARKS, Clerk of District Court
By _____ Deputy Clerk

AMBER M MULLEN

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

DANA ROLAN, on her own behalf
and on behalf of the class she represents,

Plaintiffs,

v.

NEW WEST HEALTH SERVICES,
DARWIN SELECT INSURANCE
COMPANY and ALLIED WORLD
ASSURANCE COMPANY and
DARWIN NATIONAL ASSURANCE
COMPANY,

Defendants.

Cause No. CDV-2010-91

**ORDER CERTIFYING RULINGS
FOR INTERLOCUTORY APPEAL**

Plaintiffs have moved the Court to certify issues as final for
interlocutory appeal, and Allied World Assurance Company (Allied) does not
object to certification of the rulings on motions for summary judgment as final
judgments pursuant to Montana Rule of Civil Procedure 54(b).

////

1 Montana Rule of Civil Procedure 54(b) provides:

2 (1) When an action presents more than one claim for relief --
3 whether as a claim, counterclaim, crossclaim, or third-party claim --
4 or when multiple parties are involved, the court may direct entry of a
5 final judgment as to one or more, but fewer than all, claims or parties
6 only if the court expressly determines that there is no just reason for
7 delay. Otherwise, any order or other decision, however designated,
8 that adjudicates fewer than all the claims or the rights and liabilities
9 of fewer than all the parties does not end the action as to any of the
10 claims or parties and may be revised at any time before the entry of a
11 judgment adjudicating all the claims and all the parties' rights and
12 liabilities.

13 (2) Any order or other decision granted pursuant to Rule
14 54(b)(1) must comply with the certification of judgment
15 requirements of Montana Rule of Appellate Procedure 6(6).

16 Montana Rule of Appellate Procedure 6(6) provides:

17 Certification of a judgment as final for purposes of appeal.
18 Notwithstanding the provisions of section (5)(a) of this rule, a
19 district court may direct the entry of final judgment as to an
20 otherwise interlocutory order or judgment, only upon an express
21 determination that there is no just reason for delay, pursuant to M. R.
22 Civ. P. 54(b). In so doing, the district court must balance the
23 competing factors present in the case to determine if it is in the
24 interest of sound judicial administration and public policy to certify
25 the judgment as final, and the court shall, in accordance with existing
case law, articulate in its certification order the factors upon which it
relied in granting certification, to facilitate prompt and effective
review. A certification order failing to meet these requirements shall
be subject to summary dismissal pursuant to rule 4(4)(b).

Plaintiff Dana Rolan (Rolan) was injured in a vehicle accident on
November 16, 2007. She sustained serious injury resulting in medical expenses
of approximately \$120,000. Rolan carried health insurance through New West.

1 The tortfeasor, who caused the accident, had liability insurance through Unitrin
2 Services Group. Unitrin accepted responsibility and paid approximately
3 \$100,000 of Rolan's medical bills. *Rolan v. New West Health Servs.*, 2017 MT
4 270, ¶ 3, 389 Mont. 228, 405 P.3d 65 (*Rolan II*).

5 On January 26, 2010, Rolan filed a complaint against New West
6 alleging individual and class claims for breach of contract, violation of made-
7 whole rights and unfair claims settlement practices. On April 25, 2012, the
8 district court granted class certification. New West appealed and the class
9 certification was upheld. *Rolan v. New West Health Servs.*, 2013 MT 220, 371
10 Mont. 228, 307 P.3d 291 (*Rolan I*).

11 Application of ERISA and federal preemption were litigated from
12 2013 through 2016. In the fall of 2016, New West announced that it would cease
13 doing business on January 1, 2017. The Class then moved for a show cause
14 hearing to determine whether New West should be required to post a bond and
15 perform an accounting to assure it had the ability to respond to damages. (Dkts.
16 124, 125, 127.) The Court denied relief based on New West representations of its
17 insurance coverage through Allied.

18 This Court issued a ruling in December 2016 granting New West
19 summary judgment based on ERISA preemption. The Supreme Court reversed
20 that ruling in *Rolan II*.

21 The original parties to the case – Plaintiffs and New West – have
22 entered into a settlement agreement resolving the claims between them. The
23 agreement presumed coverage from Allied. Allied has denied coverage. The
24 settlement includes an assignment from New West to Plaintiffs of New West's
25 claims, if any, against Allied. Several key insurance coverage issues have been

1 determined by the Court, and final resolution of those issues by interlocutory
2 appeal is necessary to resolve the funding and finalization of the settlement
3 between New West and Plaintiffs. During the pendency of the interlocutory
4 appeal, Plaintiffs may provide notice and attempt to populate the class. That
5 process can continue while coverage issues are appealed, which furthers judicial
6 economy and public policy. This case has been litigated for a decade.

7 Resolution of coverage issues is necessary.

8 The Montana Supreme Court has recognized that summary judgment
9 rulings may be appealed on an interlocutory basis. *Moe v. Butte-Silver Bow*
10 *Cnty.*, 2016 MT 103, ¶ 13, 338 Mont. 297, 371 P.3d 415 (certification of
11 summary judgment order as final is appropriate pursuant to consent of parties and
12 Montana Rule of Civil Procedure 54(b) and Montana Rule of Appellate
13 Procedure 6(6).) Having weighed the various factors and considered the parties'
14 mutual interest in obtaining rulings on pending insurance coverage issues, this
15 Court expressly determines that certain interlocutory rulings are certified as final
16 based on this Court's express determination that there is no just reason for delay.
17 The Court has balanced the competing factors present in the case and determined
18 that it is in the interest of sound judicial administration and public policy to
19 certify these specific rulings, which involve the availability of insurance
20 coverage.

21 FOR GOOD CAUSE SHOWN,

22 The following rulings, all of which are grants or denials of summary
23 judgment, are certified as final and suitable for appeal:

24 ////

25 ////

1 **Order dated October 23, 2018 (Dkt. 230)**

2 1. Denial of Allied's motion for partial summary judgment for \$1
3 million limit of coverage;

4 2. Grant of Allied's motion for partial summary judgment on
5 inapplicability of HCDO policy;

6 3. Denial of New West's motion for summary judgment for
7 assumption of excess verdict; and

8 4. Grant of Plaintiffs' and New West's cross-motions for partial
9 summary judgment for estoppel regarding enforcement of "each claim" policy
10 limit.

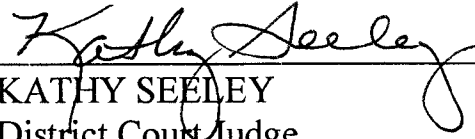
11 **Order dated April 19, 2019 (Dkt. 273)**

12 1. Denial of Allied's motion for summary judgment regarding
13 indemnification; and

14 2. Grant of summary judgment on the issue of the incentive
15 award.

16 IT IS SO ORDERED.

17 DATED this 27 day of April 2020.

18
19 
20 KATHY SEELEY
District Court Judge

21
22 pc: Erik B. Thueson, PO Box 280, Helena MT 59624-0280
23 Robert Lukes, PO Box 7909, Missoula MT 59807-7909
24 Martha Sheehy, PO Box 584, Billings MT 59103-0584
25 Gary Zadick, PO Box 1746, Great Falls MT 59403
Randall Nelson/Thomas Bancroft, 2619 St. Johns Avenue, Suite E, Billings MT
59102

KS/t/rolan v new west ord certify rulings.doc