IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROLINE BEHREND, et al.	:	CIVIL ACTION
v.	:	
COMCAST CORPORATION, et al.	:	NO. 03-6604
JACK ROGERS, et al.	:	CIVIL ACTION
v.	:	
COMCAST CORPORATION, et al.	:	NO. 07-218
MARTHA KRISTIAN, et al.	:	CIVIL ACTION
v.	:	
COMCAST CORPORATION, et al.	:	NO. 07-219

ORDER

AND NOW, this 31st day of August, 2007, **IT IS HEREBY ORDERED** that the Defendants' Motion Pursuant to 28 U.S.C. § 1292(b) to Certify Question (Docket Entries 03-6604, No. 224; 07-218, No. 11) is **DENIED**.[1]

[1]Under 28 U.S.C. § 1292(b), an otherwise non-appealable order may be certified for immediate interlocutory appeal where: 1) the decision involves a controlling question of law; 2) there is substantial ground for difference of opinion with respect to that question; and 3) immediate appeal may materially advance the ultimate termination of the litigation. See Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 478 F. Supp. 889, 943 (E.D. Pa. 1979) (quoting 28 U.S.C. § 1292(b)). The decision to certify an order for appeal under § 1292(b) lies within the sound discretion of the trial court. Fox v. Horn, 2000 U.S. Dist. LEXIS 3106, at *3 (E.D. Pa. Mar. 13, 2000). Certification

BY THE COURT:

S/John R. Padova

John R. Padova, J.

---

is only appropriate in "exceptional" cases. Thornbury Noble, Ltd. v. Thornbury Twp., 2002 U.S. Dist. LEXIS 4698, at *60 (E.D. Pa. Mar. 20, 2002) (citing Piazza v. Major League Baseball, 836 F. Supp. 269, 270 (E.D. Pa. 1993). In exercising our discretion, we must be mindful of the strong policy against piecemeal appeals. Orson, Inc. v. Miramax Film Corp., 867 F. Supp. 319, 321 (E.D. Pa. 1994).

Defendants seek to certify for immediate appeal our Order of July 31, 2007, denying their motion to dismiss in Civ. A. 07-218, and their motion for judgment on the pleadings in Civ. A. 03-6604. Specifically, they seek to certify whether our decision properly applied the recent decision in Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007). We find the Defendants have not satisfied two of the three statutory requirements.

A "controlling question of law" is one that "would result in a reversal of a judgment after final hearing." Katz v. Carte Blanche Corp., 496 F.2d 747, 755 (3d Cir. 1974). The emphasis is on whether a different resolution of the issue would eliminate the need for trial. FDIC v. Parkway Exec. Office Ctr., 1997 U.S. Dist. LEXIS 14939, at *7 (E.D. Pa. Sept. 24, 1997). Our July 31, 2007 Order applied the Twombly standard to find that the Philadelphia / Chicago and Boston Complaints alleged facts sufficient to show an "agreement" was made to impose horizontal market divisions in violation of section 1 of the Sherman Act. Defendants concede that interlocutory review would only encompass the section § 1 claims. (Def. Mem. at 3.) An issue that is a "controlling question" as to only one count of a multi-count complaint presents serious obstacles to certification under § 1292(b). See Piazza at 271 (holding that courts should be "particularly cautious" in certifying a controlling issue as to only one count of a multi-count complaint). Even if the Defendants are successful in their arguments before the Court of Appeals, certifying the section 1 issue will not eliminate the need for trial on Plaintiffs' section 2 claims. For this reason, we find that Defendants have failed to satisfy the controlling question of law requirement, as well as satisfy the third requirement of § 1292(b) that certification will materially advance the ultimate termination of the litigation.