

No. 15-342L  
(Filed: March 18, 2019)

Defendant.

<sup>1</sup> The Arizona-Florida Land Exchange Act was Title IV of the Arizona-Idaho Conservation Act of 1988, Pub. L. No. 100-696, 102 Stat. 4571, 4577-93 (1988).

make up those payments; and Claim III, breach of the government's fiduciary obligations to properly and prudently invest Trust Fund payments that have been collected and deposited. The court dismissed Claims I and II in their entirety. The claims based on insufficient initial security requirements were found to be time-barred and the claims related to the government's breach of its fiduciary obligations to make up payments were dismissed for failure to state a claim. *Inter-Tribal*, 140 Fed. Cl. at 455-58. Additionally, the court dismissed the portion of Claim III that sought payments for breach of trust that occurred more than six years prior to the filing of the suit by ITCA on the grounds that this portion of the claim was barred by the six-year statute of limitation in 28 U.S.C. § 2501. *Id.* at 458-60.

In its motion for entry of judgment pursuant to Rule 54(b), ITCA argues that the court's dismissal of Claims I, II, and the portion of Claim III barred by the statute of limitations are final dispositions on separate and distinct claims for the purposes of Rule 54(b) and that there being no just reason for delay the court should enter a final judgment so that ITCA can appeal the court's rulings. The government opposes ITCA's motion for entry of partial final judgment under Rule 54(b) for two reasons. First, with regards to Claims I and II, the government argues that a Rule 54(b) motion is not appropriate because ITCA has not made the required showing of the harm it will suffer if it is required to wait to appeal the dismissal of these claims until the court resolves the outstanding portion of Claim III. Second, the government argues that the Claim III cannot be separated for purposes of entering a final judgment and thus a partial final judgment under Rule 54(b) is improper. For the following reasons, the plaintiff's motion

for entry of partial final judgment is **GRANTED** as to Claims I and II and **DENIED** with regard to the dismissed portion of Claim III.

## **I. LEGAL STANDARDS**

Rule 54(b) provides that “[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Recognizing that litigation has become increasingly complex, “[i]n the interest of sound judicial administration, Congress enacted Rule 54(b) to ‘relax[] the restrictions upon what should be treated as a judicial unit for the purposes of appellate jurisdiction.’” *W.L. Gore & Assocs., Inc. v. Int’l Med. Prosthetics Research Assocs., Inc.*, 975 F.2d 858, 861 (Fed. Cir. 1992) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 432 (1956)).

In *Curtiss-Wright Corp. v. General Elec. Co.*, the Supreme Court explained that courts must apply a two-part test to determine whether partial judgment under Rule 54(b) is warranted. 446 U.S. 1 (1980). First, the court must “determine that it is dealing with a ‘final judgment’” *Id.* at 7. A final judgment contains two components: first “[i]t must be a ‘judgment’ in the sense that it is a decision upon a cognizable claim for relief,” and second “it must be ‘final’ in the sense that it is ‘an ultimate disposition of an individual claim entered in the courts of a multiple claim action.’” *Id.* Second, the court must find that there is no just reason for delay and “take into account the judicial administrative interests as well as the equities involved.” *Id.* at 8.

The Federal Circuit has explained that the “separateness of the claims for relief” for the purposes of Rule 54(b) “is a matter to be taken into account in reviewing the trial court’s exercise of discretion in determining that there is no just reason to delay the appeal.” *W.L. Gore*, 975 F.2d at 862 (citation omitted). The Federal Circuit has further explained that “[e]ven for claims that arise out of the same transaction or occurrence, sound case management may warrant entry of partial final judgment.” *Intergraph Corp. v. Intel Corp.*, 253 F.3d 695, 699 (Fed. Cir. 2001). In this connection, the Federal Circuit has also held, however, that where claims are intertwined such that the court could face the same issue twice on appeal, entry of judgment under Rule 54(b) is not proper. See *Vermont Yankee Nuclear Power Corp. v. United States*, 346 F. App’x 589, 591 (Fed. Cir. 2009) and *Boston Edison Co. v. United States*, 299 F. App’x 956, 958 (Fed. Cir. 2008).

## **II. DISCUSSION**

ITCA argues that an entry of partial judgment under Rule 54(b) for Claims I and II is appropriate because the court’s dismissal of the Claims I and II is a final decision with regard to these respective claims and there is no just reason for delay. ITCA maintains that Claims I and II are separate from the remaining portion of Claim III because there is no factual overlap. Pl.’s Mot. at 5. Specifically, ITCA argues that the facts relating to Claims I and II involve the government’s conduct prior to the collection and deposit of Trust Fund Payments that were due from Collier under the Act while the remaining portion of Claim III involves the government’s conduct after it collected those payments from Collier. *Id.* Additionally, ITCA argues that there is no just reason for delay of entry of a Rule 54(b) judgment on Claims I and II. *Id.* at 6. ITCA argues that the ability to

appeal the court's dismissal of Claims I and II would be in the interest of judicial efficiency because if the Federal Circuit reverses this court's decision, any amounts owed to ITCA could be added to the court's determination of any amounts owed under Claim III. *Id.* With regard to Claim III, ITCA argues that whether the statute of limitations is a bar to its claim for payments received more than six years ago, the court's dismissal of a portion of Claim III is also final and separate from the merits of the claim. ITCA argues that there is no just reason for delay regarding Claim III on the grounds that if the Federal Circuit determines that the statute of limitations is not a bar to the dismissed portions of its claim, it too can be added to the court's determination of the amounts owed for underinvestment by the government.

In response, the government does not contest that the court's dismissal of Claims I and II is a "final" disposition of those claims and that they are separate from the remaining portion of Claim III; rather, the government argues that ITCA has not shown that there is no just reason for delay. Def.'s Resp. at 5. Specifically, the government argues that the remaining portion of Claim III will likely be resolved in the next few months and that ITCA has not shown any harm that would result if ITCA has to wait that short amount of time to appeal the dismissal of Claims I and II. *Id.* at 4 (citing *Abbey v. United States*, 101 Fed. Cl. 239, 244 (2011) (denying a Rule 54(b) judgment because the movant failed to show that it would be harmed due to the delay in appeal)). Furthermore, the government argues that if the court were to grant ITCA's 54(b) motion with respect to Claims I and II, it would create a piecemeal appeals of interrelated issues which would waste judicial resources. *Id.* at 6.

ITCA contends that the government's arguments against entry of a judgment under Rule 54(b) are not valid. ITCA argues that an appeal of Claims I and II has no bearing on Claim III and with regard to the remaining portion of Claim III that there is no basis to believe the matter will be resolved in a matter of months. Pl.'s Reply at 9 (citing *White Mountain Apache Tribe v. United States*, No. 17-359L, 2018 WL 6293242 (Fed. Cl. Dec. 3, 2018) (two-year old tribal breach of trust case remains pending with unresolved jurisdictional issues)).

The court agrees with ITCA regarding Claims I and II and finds that entry of judgment pursuant to Rule 54(b) is appropriate to Claims I and II of its Second Amended Complaint. First, it is undisputed that the court's dismissal of these two claims in its October 17, 2018 opinion is a "final judgment" of these claims. *Curtiss-Wright Corp*, 446 U.S. 1, 7 (1980). Next, the court finds that there is no just reason for delay for entry of final judgment for Claims I and II. The amounts ITCA claims are owed in Claims I and II are completely distinct from the remaining portion of Claim III that is currently pending before the court. If the Federal Circuit were to determine that the government breached its trust obligations the amounts owed should be determined without delay. Therefore, the court hereby **GRANTS** ITCA's motion for a Rule 54(b) judgment for Claims I and II.

With regard to the entry of partial judgment under Rule 54(b) for the portion of Claim III that was dismissed for lack of subject matter jurisdiction due to the six-year statute of limitation, the court finds that the government has the better argument and the motion is thus denied. The court agrees with the government that there has been no final disposition of the merits of Claim III and as such an entry of a Rule 54(b) judgment for

the portion of Claim III that was dismissed is premature. There has not been a final resolution of the claim as required by the Supreme Court in *Curtiss-Wright Corp.*

Because the court finds that there has not been a final resolution of the claim there is the possibility of duplicative appeals involving the same claim. For this reason alone, ITCA's motion for entry of judgment under Rule 54(b) for the portion of Claim III that was dismissed as time-barred is hereby **DENIED**.

### **CONCLUSION**

For the reasons stated above the court now **GRANTS-IN-PART** and **DENIES-IN-PART** the plaintiff's motion for entry of final judgment under Rule 54(b).

Accordingly, there being no just reason for delay, the Clerk of the Court shall enter judgment dismissing Claims I and II of ITCA's Second Amended Complaint pursuant to Rule 54(b).

The parties shall submit a joint status report with proposed next steps for resolving the remaining portion of Claim III of ITCA's Second Amended Complaint by **March 25, 2019**.

**IT IS SO ORDERED.**

s/Nancy B. Firestone  
NANCY B. FIRESTONE  
Senior Judge