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ALERT

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SUPREME COURT CLARIFIES APPLICATION OF FINAL JUDGMENT RULE IN MDL PROCEEDINGS, BUT UNCERTAINTY REMAINS

By Christian D. Sheehan

On January 21, 2015, the Supreme Court issued its much-anticipated decision in *Gelboim v. Bank of America Group*. The case presented a single question: Is a district court order dismissing all claims in an action that was consolidated with several others for pretrial purposes a final and immediately appealable order? In a unanimous decision authored by Justice Ginsburg, the Supreme Court said "Yes."

Ellen Gelboim alleged that defendant banks violated the antitrust laws by manipulating a measure of interest rates. The Judicial Panel on Multidistrict Litigation (MDL) consolidated her case with several similar cases solely for pretrial purposes. Although Gelboim sued only for antitrust violations, the other cases included non-antitrust claims as well. The district court dismissed all antitrust claims, but did not dismiss the other claims. Because Gelboim's complaint contained only the antitrust claim, the court dismissed her complaint in its entirety. Gelboim appealed. The Second Circuit dismissed the appeal *sua sponte*, holding that the dismissal of Gelboim's case was not immediately appealable because the cases with which it was consolidated (those also involving non-antitrust claims) remained pending in the district court.

The Supreme Court granted Gelboim's petition for *certiorari* and reversed. The Court held that Gelboim's complaint retained its independent status for purposes of the statute conferring appellate jurisdiction, 28 U.S.C. § 1291, so her right to appeal ripened upon dismissal of her complaint, not upon eventual completion of MDL proceedings in all consolidated cases. Echoing the concerns expressed by the justices at oral argument, the Court explained that the banks' argument — that there is no right to appeal until the consolidated proceedings conclude — would leave plaintiffs "in a quandary about the proper timing of their appeals." Under the banks' theory, it was unclear when the 30-day clock for filing an appeal would begin to run. And as any appellate practitioner knows, timing matters. Failure to file a timely appeal will result in dismissal of the appeal.

The Court also rejected the banks' argument that Rule 54(b) of the Rules of Civil Procedure provides a way for litigants like Gelboim to obtain immediate appellate relief. Rule 54(b) applies to orders finally adjudicating fewer than all claims in a single action; it does not apply to single-claim actions. Furthermore, because the MDL statute does not convert the individual consolidated cases into a single "monolithic multidistrict action," Rule 54(b) was of no help to Gelboim. The Court emphasized, however, that Rule 54(b) can play a

role in streamlining appeals in MDL proceedings. In fact, the district court here did just that, granting Rule 54(b) certifications to the plaintiffs in the cases that raised non-antitrust claims to allow them to appeal dismissal of their antitrust claims at the same time as Gelboim.

Although the Supreme Court has now clarified that a plaintiff may immediately appeal a complete dismissal of her complaint that was consolidated in an MDL for pretrial purposes, uncertainty remains. The Court limited its holding to consolidation for *pretrial* purposes and did not decide whether an order deciding one of multiple cases that have been consolidated for *all* purposes is immediately appealable as of right. In light of this uncertainty, the most prudent course for a litigant whose complaint is consolidated with others for all purposes would be to appeal an order completely dismissing his complaint within 30 days.◆

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