2021 IL App (2d) 210465-U
No. 2-21-0465
Order filed December 2, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FLOYD SCHULTZ, STANLEY BLUNIER, and BRAD RISKEDAL, individually and as class representatives on behalf of all of the minority unitholders of Illinois River Energy Holdings, LLC, Plaintiffs-Appellants and Cross-Appellees, v. SINAV LIMITED; GTL RESOURCES USA, INC.; GTL RESOURCES LIMITED; GTL RESOURCES PLC; SIEM KAPITAL, AS; NORTH ATLANTIC VALUE LLP; SIEM INDUSTRIES, INC.; GTL CAMBRIDGE LLC; RICHARD H. RUEBE, JEFFREY W. LEMAJEUR; VINCENT J. KWASNIEWSKI; and NEAL T. JAKEL, Defendants (Richard H. Ruebe, Jeffrey W. Lemajeur, Vincent J. Kwasniewski, and Neal T. Jakel, Defendants-Appellees and Cross-Appellants.)	)	Appeal from the Circuit Court of Ogle County. No. 2014-L-15 Honorable Robert T. Hanson Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Bridges and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court dismissed this appeal and the cross-appeal for lack of jurisdiction where the matters were not appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 18, 2016).

¶ 2 Plaintiffs Floyd Schultz, Stanley Blunier, and Brad Riskedal, individually and as class representatives on behalf of all of the minority unitholders of Illinois River Energy Holdings, LLC (IREH), filed a six-count complaint against 12 defendants: (1) Sinav Limited (Sinav), (2) GTL Resources USA, Inc. (GTL USA), (3) GTL Resources Limited (GTL Limited), (4) GTL Resources PLC (GTL PLC), (5) Siem Kapital, AS (Siem Kapital), (6) North Atlantic Value LLP (NAV LLP), (7) Siem Industries, Inc. (Siem, Inc.), (8) GTL Cambridge LLC (GTL Cambridge), (9) Richard H. Ruebe, (10) Jeffrey W. Lemajeur, (11) Vincent J. Kwasniewski, and (12) Neal T. Jakel. Following the first phase of a bifurcated trial in the circuit court of Ogle County, the court entered a money judgment on count II of the complaint in favor of plaintiffs and against Ruebe, Lemajeur, Kwasniewski, and Jakel. The trial court made findings pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 18, 2016), and plaintiffs appealed.

¶ 3 Ruebe, Lemajeur, Kwasniewski, Jakel, Sinav, GTL USA, GTL Limited, GTL PLC, and GTL Cambridge moved to dismiss this appeal for lack of jurisdiction. For the following reasons, we grant those motions. We also dismiss a cross-appeal that was filed by Ruebe, Lemajeur, Kwasniewski, and Jakel.

¶ 4 I. BACKGROUND

¶ 5 A. The Complaint

¶ 6 In May 2014, plaintiffs filed a class action complaint on behalf of the former minority shareholders of IREH. Plaintiffs alleged as follows.

¶ 7 In the early 2000s, plaintiffs formed Illinois River Energy, LLC (IRE), hoping to operate an ethanol plant in Rochelle. In 2005, plaintiffs became acquainted with Peter Middleton, who

controlled GTL PLC. Middleton invested in IRE in exchange for GTL PLC obtaining control of IRE. In June 2007, IREH was formed to hold all of IRE's shares and all of GTL PLC's shares. At that point, GTL PLC owned 87% of IREH's shares through GTL USA; the plaintiff class members owned the remaining 13% of IREH's shares.

¶ 8 Middleton hired Ruebe to run the plant. Eventually, Ruebe replaced Middleton as the chief executive officer of both GTL USA and GTL PLC. Ruebe then replaced IREH's key employees with his own people, including Kwasniewski, Lemajeur, and Jakel.

¶ 9 According to plaintiffs, in late 2011, Ruebe, Kwasniewski, Lemajeur, and Jakel schemed with outside entities to force the class members to sell their interests in IREH at an unfairly low price. In furtherance of this scheme, Siem, Inc., Siem Kapital, and NAV LLP formed Sinav. In January 2012, Sinav purchased GTL PLC. As part of that transaction, a new private entity was formed called GTL Limited, which controlled IREH through GTL USA. The same day that this transaction closed, GTL USA removed and replaced IREH's two independent board members. Later that month, IREH's board voted 4-3 to force the class members to accept $1.10 per share for their interests in IREH. Specifically, defendants Ruebe, Kwasniewski, Lemajeur, and Jakel voted in favor of this "squeeze out," while plaintiffs Schultz, Blunier, and Riskedal voted against it. IREH then merged with a subsidiary of GTL USA called GTL Cambridge. The alleged end game of this complicated scheme was for Sinav eventually to sell the Rochelle plant at a substantial profit to the financial benefit of all defendants.

¶ 10 Count I of the complaint alleged that GTL USA, Ruebe, Lemajeur, Kwasniewski, and Jakel breached GTL USA's LLC agreement. According to plaintiffs, these five defendants acted in bad faith by "railroad[ing] IREH minority unitholders through an overly expeditious squeeze-out process that did not pause to consider or to correct serious procedural and analytical

shortcomings." Plaintiffs further alleged that these five defendants breached the LLC agreement by willfully failing "to deal fairly with minority unitholders in connection with the squeeze-out matter for which each GTL-controlled Manager had a material conflict of interest." Plaintiffs also alleged that these five defendants improperly approved the squeeze-out merger "without considering an independent committee, without considering a vote of minority unitholders, without allowing the minority unitholders sufficient time to address the proposal, and without regard to the above-alleged flaws in the valuation process." Plaintiffs' prayer for relief in count I included: (1) certifying the matter as a class action, (2) awarding damages, including rescissory damages, to class members for the fair value of their investments, (3) awarding costs of this action, and (4) such further relief as the court deemed just and proper.

¶ 11 Count II of the complaint alleged breach of fiduciary duties against Ruebe, Lemajeur, Kwasniewski, and Jakel. Plaintiffs began this count by realleging all prior paragraphs of the complaint, including count I. According to plaintiffs, "[t]o the extent that the above-alleged conduct" of Ruebe, Lemajeur, Kwasniewski, and Jakel did not violate the LLC agreement, it constituted breaches of their fiduciary duties. Specifically, these four defendants improperly "pursu[ed] the squeeze-out merger which advanced their personal interests through an unfair process and price to eliminate the Illinois farmers and founding members." To that end, these four defendants "owed a duty to seek an alternative maximum value for IREH unitholders without regard to the intent of any controlling entity, even if the alternative was no transaction at all." Plaintiffs included the same prayer for relief as they identified in count I.

¶ 12 Count III of the complaint alleged breach of fiduciary duties against GTL USA. Plaintiffs began this count by realleging all prior paragraphs of the complaint, including counts I and II. Plaintiffs alleged that "GTL USA, as the controlling unitholder of IREH, owed the IREH minority

unitholders a fiduciary duty of loyalty to ensure a good faith process and price for any acquisition of minority units which furthered GTL USA's private interests." Plaintiffs alleged that, "[b]y the above-alleged conduct, GTL USA breached its duties to minority unitholders by pursuing and executing an unfair merger with IREH which deprived minority unitholders of the fair value of their investments in IREH." Plaintiffs included the same prayer for relief as they identified in counts I and II.

¶ 13 Count IV of the complaint alleged breach of fiduciary duties against Sinav, GTL Limited, GTL PLC, Siem Kapital, NAV LLP, and Siem, Inc. Plaintiffs began this count by realleging all prior paragraphs of the complaint, including counts I through III. Plaintiffs alleged that these six defendants (1) "controlled the activities of GTL USA in connection with the January, 2012 self-dealing merger and squeeze-out of IREH minority unitholders" and (2) "developed and directed the scheme." According to plaintiffs, "[b]y the above-alleged conduct," the defendants in this count "breached duties to minority unitholders by pursuing and executing an unfair merger with IREH which deprived minority unitholders of the fair value of their investments in IREH." Plaintiffs included the same prayer for relief as they identified in counts I through III.

¶ 14 Count V of the complaint alleged aiding and abetting breach of fiduciary duties against Sinav, GTL Limited, GTL PLC, Siem Kapital, NAV LLP, and Siem, Inc. Plaintiffs began this count by realleging all prior paragraphs of the complaint, including counts I through IV. Plaintiffs alleged that, to the extent that these six defendants did not directly breach their own fiduciary duties, they "willfully aided and abetted" the breach of fiduciary duties committed by Ruebe, Lemajeur, Kwasniewski, Jakel, and GTL USA. Plaintiffs included the same prayer for relief as they identified in counts I through IV.

¶ 15 Finally, count VI of the complaint alleged interference with contract against Sinav, GTL

Limited, GTL PLC, GTL Cambridge, Siem Kapital, NAV LLP, and Siem Inc. Plaintiffs began this count by realleging all prior paragraphs of the complaint, including counts I through V. Plaintiffs alleged that these seven defendants "intentionally and unjustifiably interfered with" IREH's LLC agreement by inducing GTL USA, Ruebe, Lemajeur, Kwasniewski, and Jakel "to pursue and to execute the unfair squeeze-out of IREH minority unitholders." This allegedly caused GTL USA, Ruebe, Lemajeur, Kwasniewski, and Jakel "to breach the LLC Agreement, as further alleged above." Plaintiffs alleged that the seven defendants named in count VI engaged in "a willful and malicious effort to suppress the plaintiffs' rights to receive fair value through a fair process for their IREH units." Plaintiffs included the same prayer for relief as they identified in counts I through V, but they added a request for punitive damages.

¶ 16 B. Proceedings in the Trial Court

¶ 17 On March 2, 2015, the trial court granted defendants' motions to dismiss count IV of the complaint.

¶ 18 Plaintiffs and defendants subsequently filed cross-motions for summary judgment. On April 11, 2018, the court issued a 61-page written order granting, in part, both sides' motions for summary judgment. The court's rulings narrowed the scope of the litigation but did not completely resolve any additional counts of the complaint. One of the issues that the court decided in its April 11, 2018, order was that Ruebe, Lemajeur, Kwasniewski, and Jakel breached their fiduciary duties as well as IREH's LLC agreement. However, the court determined that plaintiffs were not entitled to rescissory damages, which plaintiffs requested in all six counts of their complaint. The court found that genuine issues of material fact remained as to numerous other issues in the case, including (1) determining the fair price of the class members' shares and (2) determining the liability of the entities that were named as defendants in counts III, V, and VI of the complaint.

¶ 19 In 2019, some of the defendants requested a bifurcated trial to resolve the claims against the individual defendants (Ruebe, Lemajeur, Kwasniewski, and Jakel) before the claims against the corporate defendants. On November 25, 2019, the trial court adopted that suggestion over plaintiffs' objection. Specifically, the court opted to hold an initial trial for the limited purpose of determining the difference between what plaintiffs received for each of their shares in the squeeze-out merger ($1.10) and the fair value of those shares on February 22, 2012 (the day the merger was completed by filing the necessary documents with Delaware authorities). The court expressed its hope that proceeding in this manner would spawn a settlement.

¶ 20 Also on November 25, 2019, the trial court denied plaintiffs' motion for leave to amend their complaint to add, among other things, a prayer to each of the counts requesting disgorgement of profits.

¶ 21 On October 26 through 30 and November 20, 2020, the court held a trial on the first portion of the bifurcated proceedings. The court issued its posttrial ruling on April 30, 2021, determining that each of the class members' shares was worth $2.78 at the time of the squeeze out.

¶ 22 The parties contemplated how to proceed in light of the court's factual finding as to the value of the shares. At a status conference on May 27, 2021, counsel for some of the defendants indicated that, if the parties could not reach a settlement, defendants would request Rule 304(a) findings to pursue an appeal. At the same status hearing, plaintiffs' counsel asked the court when it could try the second portion of the bifurcated proceedings. The court responded that it anticipated that the second trial would involve a lot of testimony that the court heard at the first trial; nevertheless, the court could not schedule a second trial until the parties determined how much additional evidence would be necessary. The parties told the court that they would pursue settlement negotiations before returning to court the next month for a status conference.

¶ 23 The parties did not settle the case. On June 17, 2021, plaintiffs filed a motion requesting the court to take multiple actions. As it pertains to the present motions to dismiss, plaintiffs requested that the court (1) enter final judgments against Ruebe, Lemajeur, Kwasniewski, and Jakel on counts I and II of the complaint and (2) issue Rule 304(a) findings with respect to those judgments. Defendants opposed the request for Rule 304(a) findings.

¶ 24 On July 26, 2021, the court entered a "final judgment as to one or more but fewer than all of the parties or claims." Specifically, the court entered a final judgment with respect to count II of the complaint (but not count I), assessing damages against Ruebe, Lemajeur, Kwasniewski, and Jakel, jointly and severally, in the amount of $10,994,896.06. The court made Rule 304(a) findings with respect to count II. The court also made Rule 304(a) findings with respect to "Plaintiffs' claims for rescissory damages and disgorgement"—issues that the court had resolved in April 2018 and November 2019, respectively.

¶ 25 In explaining its rationale for making Rule 304(a) findings, the court said the following with respect to the "*Geier* factors" (see *Geier v. Hamer Enterprises, Inc.*, 226 Ill. App. 3d 372, 383 (1992)):

> "And the Trial Court is very much aware that the Appellate Court does not favor this, does not favor appeals under 304(a) unless they meet the requirements, so I have to look at the relationship between the adjudicated and unadjudicated claims. And I think in Count I there is an issue there. There is one corporate defendant, GTL USA, who again was not part of the motion by the plaintiffs for summary judgment, they're still listed in Count I. So, yeah, they are, as defendants argued, jointly and severally liable, so I think that's an issue as to Count I. It's not an issue in Count II.
>
> The possibility of the need for review might or might not be mooted by future

developments in the Trial Court, I don't see that happening. I don't see future efforts in mooting [*sic*] what was done in Count II.

[*Geier* Factor] III, the possibility the reviewing Court might be obligated to consider the same issue a second time. I don't believe so as far as what I've decided in Count II.

The presence of a claim or counterclaim which would result in a setoff against the judgment. There's no counterclaim, there's no setoff in Count II, just the individual defendants.

And then miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, claims, expense, I think the plaintiffs make a strong argument concerning the patience that the members of the class have shown in waiting for this matter to be resolved.

And [defense counsel is] right, I mean, they [plaintiffs] did wait two and a half years to file this, almost two and a half years, and didn't pursue injunctive relief at the beginning, that's all fine, but they have waited a long time. And I've made significant decisions involving the individual defendants to determining liability and determined what the damages should be. So I'm going to deny the request as to Count I but I'm going to grant it as to Count II. And that will be a final judgment as to Count II. There will be no just reason to delay the enforcement over [*sic*] the appeal of that."

The court stayed proceedings pending appeal.

¶ 26 Certain defendants moved the court to reconsider the Rule 304(a) findings. The court denied that motion on September 23, 2021, reasoning:

• "The remaining issues in Plaintiffs' Complaint are against the Entity Defendants for

aiding and abetting the breach of fiduciary duty and willful interference with the LLC agreement. These matters involve separate and distinct issues from those determined in the Court's findings that the Individual Defendants breached their fiduciary duties. The issues unresolved in the Plaintiffs' Complaint will focus on the conduct and actions of the Entity Defendants. In Count VI the Plaintiffs are seeking punitive damages. These issues are distinct from the Individual Defendants' Breach of fiduciary duty."

• Some defendants had previously expressed their desire to take an appeal pursuant to Rule 304(a), which was "a 180 degree reversal" from their present opposition to Rule 304(a) findings.

• "[F]inal resolution of the claim against the Individual Defendants will aid in the settlement or shorten the trial resolution of the claims against the Entity Defendants. If the Appellate Court finds the squeeze-out procedure and price paid to be fair, any claims against the Entity Defendants is [*sic*] significantly, if not totally, minimized. Even if the procedure was unfair and the price paid was fair, any claim against the Entity Defendants is significantly, if not totally, minimized. If the Appellate Court finds the Court's ruling that the procedure was unfair and the price of $1.10/unit unfair, it can determine whether the Court's price setting of $2.78/unit is or is not proper. This determination will aid in any potential settlement and will not delay the trial against the other Entity Defendants."

¶ 27 Plaintiffs filed a notice of appeal, expressing their intent to challenge the following orders:

"• April 11, 2018 Order on Cross Motions for Summary Judgment insofar as it denied Plaintiffs' claim for rescissory damages;

• November 25, 2019 Order Denying Plaintiff's Claim for Disgorgement;

• November 25, 2019 Order Bifurcating Issues for Trial and Denying Single Trial on All

Issues insofar as it improperly set a valuation date which impacted damages;

• October 30, 2020 Trial Order overruling Plaintiffs' objection to testimony of Defendants' expert beyond disclosed opinions insofar as that ruling impacted evidence of the valuation calculation;

• November 20, 2020 Trial Order overruling Plaintiffs' objection to the circuit court's receipt for post-trial consideration of demonstrative materials not admitted into evidence insofar as that ruling impacted evidence of the valuation calculation;

• April 30, 2021 Order Following Bifurcated Trial on Single Valuation Issue as of a Specific Date insofar as it improperly calculated a valuation; and

• July 26, 2021 Final Judgment as to One or More But Fewer than all of the Parties or Claims, which entered judgments associated with the above-described orders."

¶ 28 Before the appeal was briefed, Ruebe, Lemajeur, Kwasniewski, Jakel, Sinav, GTL USA, GTL Limited, GTL PLC, and GTL Cambridge moved to dismiss the appeal for lack of jurisdiction. Ruebe, Lemajeur, Kwasniewski, and Jakel subsequently filed a notice of cross-appeal. In the docketing statement for their cross-appeal, these defendants indicated that the cross-appeal was filed in case we either deny their motion to dismiss or we defer ruling on their motion.

¶ 29 II. ANALYSIS

¶ 30 Rule 304(a) provides:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

There are two requirements for appellate jurisdiction pursuant to Rule 304(a): (1) the order

appealed from must be final and (2) there must be no just reason to delay an appeal. *National Rifle & Pistol Academy, LLC v. EFN Brookshire Property, LLC*, 2020 IL App (2d) 191143, ¶ 33. Neither requirement is met in the present case.

¶ 31 A. Final Judgment

¶ 32 An order is final and appealable for purposes of Rule 304(a) if it "terminates the litigation between the parties on the merits" or "disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." *Blumenthal v. Brewer*, 2016 IL 118781, ¶¶ 23, 25. A final judgment is one that, if it is affirmed, leaves nothing for the trial court to do but to "proceed with execution of the judgment." *Blumenthal*, 2016 IL 118781, ¶ 25. An order that disposes of " 'separate, unrelated claims' " in an action is immediately appealable pursuant to Rule 304(a), but an order that merely disposes of " 'separate issues relating to the same claim' " is not. (Emphasis removed.) *Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 15 (quoting *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983)).

¶ 33 In its July 26, 2021, order, the court made Rule 304(a) findings with respect to the money judgment entered against defendants Ruebe, Lemajeur, Kwasniewski, and Jakel for their breach of fiduciary duties. At first blush, this ruling might appear to be a final judgment, as it resolved Count II of the complaint. As explained below, however, there is an unresolved claim against these same defendants in count I of the complaint that is intertwined with Count II.

¶ 34 Generally, Rule 304(a) does not allow for an immediate appeal when there are other claims pending that are based on the same operative facts. See *Illinois State Bar Ass'n Mutual Insurance Company v. Canulli*, 2019 IL App (1st) 190141, ¶ 17 ("[I]f a claim based on the same operative facts remains pending when the court issues Rule 304(a) language, then the court has not resolved even a part of the dispute, and the order is nonfinal."). In *Davis v. Loftus*, 334 Ill. App. 3d 761, 767

(2002), the court explained the purpose of what we will call the "same operative facts rule":

> "An appeal from the dismissal of one count of a multicount complaint wastes judicial resources if the plaintiff, in the dismissed count, seeks relief based on the same operative facts as those forming the basis for a surviving count. Permitting a separate appeal in such a case would require the appellate court to relearn, inefficiently, the same set of facts when the case returns for a second appeal following final judgment on all of the claims. [Citations.] Moreover, the appellate court would address facts still at issue in the claims remaining before the trial court, compromising the trial court's position as the primary fact finder."

The court in *Davis* dismissed portions of an appeal as premature because the trial court resolved certain counts but left pending other counts that depended on the same facts and requested identical relief. *Davis*, 334 Ill. App. 3d at 767-68. Other cases have recognized that it is appropriate to dismiss an appeal as premature if the claims that the trial court resolved are "inextricably intertwined" with pending claims. See *Arachnid, Inc. v. Beall*, 210 Ill. App. 3d 1096, 1104 (1991).

¶ 35 Here, count I of the complaint alleged that the four individual defendants and GTL USA breached an LLC agreement. Count II, which alleged breach of fiduciary duties against the four individual defendants, is based on the same operative facts as Count I and requested identical relief. Indeed, Count II incorporated all of the allegations of count I, and count II asserted that the four individual defendants are liable for breaching their fiduciary duties "[t]o the extent that the above-alleged conduct" did not constitute a breach of the LLC agreement. Thus, counts I and II of the complaint are factually and legally intertwined, and the trial court never entered a final order adjudicating count I against any defendants. Accordingly, pursuant to the "same operative facts rule," the money judgment against the four individual defendants on count II is not a final judgment

for purposes of Rule 304(a). See *Hildebrand v. Topping*, 240 Ill. App. 3d 104, 108 (1992) (a money judgment was not a final and appealable judgment where it was "intertwined" with a pending action for a final accounting).

¶ 36 In its July 26, 2021, order, the trial court also made Rule 304(a) findings with respect to its determination that the plaintiffs are not entitled to rescissory damages or disgorgement of profits. That determination is not a final judgment on a distinct claim in the action; it is an adjudication of issues attendant to all six counts of the complaint. See *Davis*, 334 Ill. App. 3d at 771 ("[A]n order disallowing an element of damages does not finally resolve any separate claim."). Accordingly, we hold that the trial court erroneously made Rule 304(a) findings with respect to the issues of rescissory damages and disgorgement of profits.

¶ 37 B. No Just Reason to Delay an Appeal

¶ 38 Even if there were a final judgment here, the trial court erroneously determined that there is no just reason to delay an appeal. We review the court's ruling on this point for an abuse of discretion. *National Rifle & Pistol Academy*, 2020 IL App (2d) 191143, ¶ 33.

¶ 39 Courts reference the following factors when evaluating whether an immediate appeal is justified:

> " '(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.' " *National Rifle & Pistol Academy*, 2020 IL

App (2d) 191143, ¶ 37 (quoting *Geier*, 226 Ill. App. 3d at 383).

The first factor is given particular emphasis because, "[w]here the pending and adjudicated claims are closely related and stem from the same factual allegations, the appellate court does not accept the appeal." *National Rifle & Pistol Academy*, 2020 IL App (2d) 191143, ¶ 38. "Overlapping legal bases for recovery further militate against hearing the appeal." *National Rifle & Pistol Academy*, 2020 IL App (2d) 191143, ¶ 38.

¶ 40 Here, with respect to the first *Geier* factor, all counts of the complaint arise out of the same operative facts and are legally interrelated. For example, counts II through VI each incorporated all preceding counts by reference. Additionally, all counts rested on the premise that GTL USA and the four individual defendants acted improperly by pursuing an unfair squeeze-out of IREH's minority shareholders. Significantly, the trial court has not determined whether GTL USA breached IREH's LLC agreement or breached any fiduciary duty. Nor has the court entered a final judgment on count I of the complaint against any defendants—including the four individual defendants who face a $10,994,896.06 judgment on count II. Furthermore, the trial court stated on the record that it anticipated that the second trial in these bifurcated proceedings will involve a lot of the same testimony as the first trial. This underscores the interrelation of all six counts of the complaint.

¶ 41 Looking to the specific orders that plaintiffs intend to challenge on appeal likewise illustrates how interconnected the six counts of the complaint are. For example, plaintiffs intend to argue that the court erred in dismissing their claims for rescissory damages, which they requested in all six counts of their complaint. Plaintiffs also intend to argue that the court erred in denying their request to amend all six counts of the complaint to seek disgorgement of profits. Plaintiffs further intend to challenge the court's valuation of their shares of IREH, which is an

issue that applies to all six counts of the complaint.

¶ 42 We note that the trial court asserted that it did not believe that the second *Geier* factor weighed against making Rule 304(a) findings, though the court did not explain its reasoning. We agree that, barring any settlement, future events will not likely moot an appeal.

¶ 43 The third *Geier* factor weighs against allowing an immediate appeal. As explained above, plaintiffs intend to use this appeal to raise numerous issues that relate to all counts of the complaint. If we entertained the present appeal, it is entirely possible that there could be a second appeal raising similar issues arising from counts of the complaint that have not yet been adjudicated.

¶ 44 With respect to the fourth *Geier* factor, there will be no setoff against the money judgment on count II. With that said, plaintiffs seek to hold defendants jointly and severally liable, so there may eventually be additional defendants who are ordered to pay this same amount ($10,994,896.06), with the possibility of additional punitive damages.

¶ 45 The fifth *Geier* factor is delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. One of the trial court's primary reasons for making Rule 304(a) findings here was that plaintiffs have waited seven years for a judgment. The record certainly allows the conclusion that plaintiffs are eager to resolve this case, whereas defendants are in no rush. With that said, the case involves numerous defendants and extremely complicated facts, so it is not surprising that it is taking a long time to resolve. Given the interrelation of all counts in the complaint, the best way to promote resolution of this action is for the trial court to conduct the second stage of the bifurcated proceedings rather than to allow an initial appeal involving only four of twelve defendants while the other proceedings are stayed.

¶ 46 III. CONCLUSION

¶ 47 The appeal and cross-appeal are dismissed for lack of jurisdiction.

¶ 48 Appeal and cross-appeal dismissed.