

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

MARTIN ZAKARIAN, and MARY JONES, on	)	
behalf of themselves and those similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 24-cv-00229-SRB
	)	
THE RAWLINGS COMPANY LLC,	)	
RAWLINGS FINANCIAL SERVICES, LLC,	)	
and RAWLINGS & ASSOCIATES, PLLC,	)	
	)	
Defendants.	)	

**ORDER**

Before the Court is Defendant The Rawlings Company LLC, Rawlings Financial Services, LLC, and Rawlings & Associates, PLLC’s (collectively, “Defendants”) Motion to Certify Order for Interlocutory Appeal and Suggestions in Support. ([Doc. #55.](#)) For the reasons set forth below, the motion is DENIED.

**I. FACTUAL BACKGROUND**

The facts of this case have been discussed in prior Orders and in the parties’ briefs; they will not be duplicated herein. This Order assumes familiarity with the facts and law applicable to the pending motion.

In an Order dated December 2, 2024, the Court denied Defendants’ motion for judgment on the pleadings (the “Order”). ([Doc. #52.](#)) In relevant part, the Order rejected Defendants’ argument that the Court lacked subject matter jurisdiction because Plaintiffs failed to exhaust their claims. The Court found that “Plaintiffs allege that Defendants asserted Medicare liens without an offset for the proportionate share of procurement costs, and that Plaintiffs paid Defendants under protest. Plaintiffs’ claims for negligence per se and breach of contract thus

seek damages for procurement costs under [42 C.F.R. § 411.37](#). These claims are not subject to the Medicare Act’s exhaustion requirements.” ([Doc. #52, pp. 5-6.](#))<sup>1</sup>

Defendants now move “under [28 U.S.C. § 1292\(b\)](#) to amend and certify for immediate interlocutory appeal the Court’s order dated December 2, 2024.” ([Doc. #55, p. 1.](#)) Defendants argue the Order meets the requirements for an immediate appeal and that an immediate appeal would conserve judicial and the parties’ resources. Plaintiffs oppose the motion, and the parties’ arguments are addressed below.

## **II. LEGAL STANDARD**

Pursuant to [28 U.S.C. § 1292\(b\)](#), a court may certify an order for interlocutory appeal if “(1) the order ‘involves a controlling question of law;’ (2) there is substantial ground for difference of opinion; and (3) certification will materially advance the ultimate termination of the litigation.” *White v. Nix*, [43 F.3d 374, 377](#) (8th Cir. 1994) (citation and quotation marks omitted). “A motion for certification must be granted sparingly, and the movant bears the heavy burden of demonstrating that the case is an exceptional one in which immediate appeal is warranted.” *Id.* at 376.

## **III. DISCUSSION**

Here, Defendants contend the Order satisfies all three elements under § 1292(b). In particular, Defendants argue: (1) “whether Plaintiffs’ claims are subject to the Medicare Act’s exhaustion requirements is a controlling question of law,” (2) there is a substantial ground for difference of opinion on exhaustion because the Order is contrary to decisions from courts; and (3) “an immediate appeal would materially advance the termination of the litigation because

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<sup>1</sup> All page numbers refer to the pagination automatically generated by CM/ECF.

reversal on appeal would mean that this Court lacks subject matter jurisdiction over Plaintiffs' claims, ending the litigation." ([Doc. #55, pp. 7-8.](#))

Upon review, the Court rejects Defendants' arguments. The Court agrees with Plaintiffs that:

[Defendants'] question of law is not a 'pure question of law.' Rather it is a mixed question of fact and law which is not appropriate for certification. [Defendants] moved for judgment on the pleadings based solely on the purported lack of factual allegations in Plaintiffs' Complaint regarding the exhaustion of administrative remedies. While Plaintiffs disputed the application of administrative remedies, Plaintiffs argued alternatively that exhaustion of administrative remedies would be futile given the correspondence attached to their opposition. Plaintiffs also prayed for leave to amend should the Court be inclined to grant [Defendants'] Motion for Judgment on the Pleadings. Further, exhaustion of administrative remedies is an affirmative defense. Taken together, [Defendants'] Motion for Judgment on the Pleadings relates only to the presence and absence of factual allegations in Plaintiffs' class action complaint and that would [not] be dispositive of the case as [Defendants] now suggest[.] Further, [Defendants] ha[ve] taken the position that [they] correctly followed the recovery rights under the Medicare Secondary Payer Act and den[y] any wrongdoing. . . . Ultimately, [Defendants' pending] Motion regards both factual and legal questions surrounding whether exhaustion is required and, if so, whether Plaintiffs either exhausted administrative remedies or whether exhaustion was futile.

([Doc. #60, pp. 11-12](#)) (citations and quotation marks omitted).<sup>2</sup> The issues identified by Plaintiffs are not amenable to an immediate appeal particularly considering that discovery remains ongoing. For these reasons, and the additional reasons stated by Plaintiffs, the Court finds an interlocutory appeal is not warranted.<sup>3</sup>

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<sup>2</sup> Plaintiffs raised similar arguments in their opposition to Defendants' motion for judgment on the pleadings. ([Doc. #43.](#))

<sup>3</sup> In addition to the pending motion, and as noted by Plaintiffs, Defendants have previously filed a motion to dismiss, a motion to strike, and a motion for judgment on the pleadings. The Court has denied each motion as contrary to the applicable facts and/or law governing this case.

#### **IV. CONCLUSION**

Consequently, Defendants' Motion to Certify Order for Interlocutory Appeal and Suggestions in Support ([Doc. #55](#)) is DENIED.

**IT IS SO ORDERED.**

/s/ Stephen R. Bough  
STEPHEN R. BOUGH  
UNITED STATES DISTRICT JUDGE

Dated: February 3, 2025