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Civil Procedure—The Minnesota Supreme Court Inserts a Greater Degree of Judicial Efficiency into Multi-party Litigation

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CIVIL PROCEDURE—THE MINNESOTA SUPREME COURT INSERTS A GREATER DEGREE OF JUDICIAL EFFICIENCY INTO MULTI-PARTY LITIGATION

Engvall v. Soo Line Railroad Co., 605 N.W.2d 738 (Minn. 2000)

Bernard E. Nodzon, Jr.†

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I. INTRODUCTION

Courts in every jurisdiction seek judicial efficiency and economy.1 Many courts attempt to achieve this goal by limiting the

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number of interlocutory appeals parties may make. Recently, the Minnesota Supreme Court had a chance to expand the number of interlocutory appeals it allows. In *Engvall v. Soo Line Railroad Co.*, the court considered two issues: first, whether a party could appeal the dismissal of another party before final judgment has been entered in a multi-party suit; and second, whether such interlocutory appeals are permissive or mandatory.

The court ruled an interlocutory order dismissing one party from a multi-party suit could not be appealed before final judgment, absent an express determination by the trial judge that there is no just reason to delay the appeal. The court also ruled that interlocutory appeals are permissive rather than mandatory—thereby clarifying Minnesota’s rules regarding interlocutory appeals.

This note examines the history of interlocutory appeals in the create legal rules that achieve efficiency and concluding the desire for economically sound legal rules plays a larger role in the legal system than one might expect.


3. Coopers & Lybrand v. Livesay, 437 U.S. 463, 474-75 (1978) (refusing to allow interlocutory appeal as of right so as to ensure efficiency in the appellate court system); *see also* Emme v. C.O.M.B., Inc., 418 N.W.2d 176, 179 (Minn. 1988) (stating the prevention of piecemeal litigation preserves judicial efficiency). Few courts have precisely defined piecemeal litigation. Linda S. Mullenix, *A Branch Too Far: Pruning the Abstention Doctrine*, 75 GEO. L.J. 99, 134 (1986). It is often defined as "duplicative, wasteful litigation." *Id.* (quoting United States v. Adair, 723 F.2d 1394, 1402 (9th Cir. 1983) and Levy v. Lewis, 635 F.2d 960, 966-67 (2d Cir. 1980)). However, the literal definition of piecemeal is to accomplish something in a fragmented manner. *MERRIAM WEBSTER'S COLLEGIATE DICTIONARY* 880 (10th ed. 1993). Therefore, it can be inferred that piecemeal litigation means to allow a case to be appealed in a fragmented manner, one ruling at a time. *See generally* JACK H. FRIEDENTHAL ET AL., *CIVIL PROCEDURE* § 13.1 (3d ed. 1999) (referring to piecemeal litigation as reviewing a case before final judgment has been rendered).


5. 605 N.W.2d 738 (Minn. 2000).

6. Catlin v. U.S., 324 U.S. 229, 233 (1945) (defining final judgment as the end of litigation on the merits, leaving nothing left for the court to do but enter judgment); *see also* 15A CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE: JURISDICTION AND RELATED MATTERS* § 3909 (1992) (discussing the leading decisions in an attempt to determine what constitutes a final judgment).


8. *Id.* The court defines permissive to mean a party has the option to appeal the ruling immediately or wait to appeal from the final judgment. *Id.*

9. *Id.* The court defines mandatory to mean the right to appeal the ruling is lost if it is not taken from an interlocutory ruling. *Id.*

10. *Id.* at 744.

11. *Id.* at 745.
United States – focusing primarily on multi-party litigation. The note also explores the types of interlocutory appeals recognized in Minnesota. Part III details the facts and the supreme court’s holding in Engvall, while Part IV analyzes the ramifications and significance of the ruling. The note concludes that the court has articulated a clear rule that advances judicial efficiency and economy.

II. BACKGROUND

A. Interlocutory Appeals At Common Law

At common law, an appeal could only be taken after all issues and claims had been decided and the court had entered final judgment. The majority of American courts followed the common law and allowed an appeal to be taken only from a final judgment. This meant that in cases involving multiple parties, an appeal could not be taken until all parties had their claims resolved.

12. Infra Part II.A.
13. Infra Part II.B.
15. Infra Part IV.A-B.
16. Infra Part V.
17. Metcalfe’s case, 77 Eng. Rep. 1193, 1193 (K.B. 1760). The final judgment rule arose in England because the King’s Bench used a writ of error to correct the errors of the common law courts. Carleton M. Crick, The Final Judgment as a Basis For Appeal, 41 YALE L.J. 539, 543 (1932). The writ was regarded as a new action and not merely a continuation of the suit in the lower court. Id. Thus, suing out a writ of error before final judgment would result in two actions in different courts – each of which the formal record was essential. Id.
18. McLish v. Roff, 141 U.S. 661, 668 (1891) (allowing appeal only after final judgment). In addition to the federal system, 49 jurisdictions follow the common law while only 2 jurisdictions do not. Montgomery Traction Co. v. Harmon, 37 So. 371, 376 (Ala. 1904) (holding appeal from interlocutory decree only allowable by statute); City of Fairbanks v. Schaible, 352 P.2d 129, 131 (Alaska 1960) (refusing to review appeal before final judgment); Douglas Laundry & Dry Cleaning Co. v. Lamb, 25 P.2d 1024, 1025 (Ariz. 1933) (stating no appeal lies from interlocutory order); Miller v. O’Bryan, 36 Ark. 200 (Ark. 1880) (dismissing interlocutory appeal before final judgment); More v. Miller, 54 P. 263, 264 (Cal. 1898) (ruling an appeal cannot be taken before final judgment); Townsend v. Petersen, 21 P. 619, 620 (Colo. 1889) (allowing an appeal only after final judgment); Mechanics’ Bank v. Woodward, 51 A. 1084, 1085 (Conn. 1902) (stating no appeal lies until after final judgment); Ridings v. McMenamin, 39 A. 463, 464 (Del. 1897) (stating court may not review appeal until final judgment); Atl. Coast Line R.R. Co. v. Goldberg, 39 A.2d 563, 564 (D.C. 1944) (holding interlocutory appeal not reviewable); Huie v. State, 92 So. 2d 264, 268 (Fla. 1957) (stating interlocutory orders are not appealable in the absence of judgment); Durrence v. Water, 79 S.E. 841, 841 (Ga. 1913) (declining to review writ of error until after final judgment); Iwai v. City and County of Honolulu, 459 P.2d 195, 195 (Haw. 1969) (declaring interlocutory appeals not reviewable until final judgment); Connell v. Warren, 27 P. 730, 730
[Idaho 1891] (stating an order issued before final judgment is not reviewable); City of Park Ridge v. Murphy, 101 N.E. 524, 525 (Ill. 1913) (refusing to review an interlocutory appeal); Foster v. Lindley, 50 N.E. 367, 368 (Ind. App. 1898) (dismissing interlocutory appeal before final judgment); In re Receivership of Bank of Hamburg, 214 N.W. 561, 561 (Iowa 1927) (holding right to appeal interlocutory order only arises after final judgment); Douglas v. Byers, 76 P. 1129, 1129 (Kan. 1904) (classifying interlocutory appeals as not reviewable); Steinke v. N. Vernon Lumber Co., 227 S.W. 274, 278 (Ky. 1921) (allowing review of interlocutory appeal only after final judgment); Schwing v. Dunlap, 51 So. 684, 685 (La. 1910) (dismissing appeal before final judgment as premature); Cameron v. Tyler, 71 Me. 27, 27 (Me. 1880) (holding interlocutory orders must not be reviewed until final judgment); H.M. Rowe Co. v. Rowe, 141 A. 334, 337 (Md. 1928) (dismissing interlocutory appeal); Shawmut Commercial Paper Co. v. Cram, 98 N.E. 696, 696 (Mass. 1912) (denying an appeal before final judgment); Fitzsimmons v. Milwaukee, L.S. & W. Ry. Co., 57 N.W. 127, 128 (Mich. 1893) (refusing to review interlocutory appeal); Phila. Storage Battery Co. v. Hawley, 154 Minn. 538, 538, 191 N.W. 815, 816 (1923) (holding orders made before judgment are not appealable until after final judgment); Fed. Land Bank v. Kimbriel, 163 So. 501, 502 (Miss. 1935) (holding plaintiff not entitled to appeal from interlocutory decree); Magee v. Mercantile-Commerce Bank & Trust Co., 98 S.W.2d 614, 615-16 (Mo. 1936) (stating interlocutory orders not appealable); In re Tuohy's Estate, 58 P. 722, 723 (Mont. 1899) (holding appeal will not lie until after final judgment); Sewall v. Whiton, 123 N.W. 1042, 1043 (Neb. 1909) (holding interlocutory decree not appealable); Rhodes v. Williams, 12 Nev. 20, 22 (Nev. 1877) (classifying and dismissing interlocutory appeal as "premature"); MacMullen v. Kingsley, 82 A. 46, 46-47 (N.J. Sup. Ct. 1912) (stating an appeal cannot be taken before final judgment); Schofield v. Am. Value Co., 54 P. 753, 756 (N.M. 1898) (prohibiting interlocutory appeals); Cape Fear & Yadkin Valley R.R. Co. v. King, 34 S.E. 541, 542 (N.C. 1899) (holding interlocutory appeal not reviewable); Harris Mfg. Co. v. Walsh, 3 S.W. 730, 730-09 (Dakota 1879) (allowing appeals only from final judgment); Ebersole v. Schiller, 35 N.E. 793, 793 (Ohio 1893) (holding an appeal does not lie until after final judgment); Hardesty v. Naharkey, 213 P. 89, 92 (Okla. 1923) (holding interlocutory appeal not reviewable); Jolliffe v. Jolliffe, 213 P. 415, 416 (Or. 1923) (declining to review interlocutory appeal); Stadler v. Borough of Mt. Oliver, 95 A.2d 776, 776 (Pa. 1953) (stating appellate court has no jurisdiction to hear interlocutory appeal); Andrade v. Nunes, 139 A. 427, 427 (R.I. 1928) (dismissing interlocutory appeal); Brown v. Pechman 33 S.E. 732, 734 (S.C. 1889) (stating interlocutory appeal can only be reviewed after final judgment has been entered); Warwick v. Bliss, 216 N.W. 865, 866 (S.D. 1927) (dismissing interlocutory appeal); Employers’ Reins. Corp. v. Going, 26 S.W.2d 126, 127 (Tenn. 1930) (holding interlocutory appeal not reviewable until final judgment); Tex. Co. v. Honaker, 282 S.W. 879, 882 (Tex. Civ. App. 1926) (refusing to review writ of error before final judgment); Lukich v. Utah Const. Co., 160 P. 270, 271 (Utah 1916) (holding appeal may not be taken until final judgment); Taft v. Mossey, 59 A. 166, 166 (Vt. 1904) (dismissing interlocutory appeal); Baber v. Page, 120 S.E. 137, 137 (Va. 1923) (stating final judgment must be entered before appeal can be taken); State Bank of Goldendale v. Beeks, 204 P. 771, 772 (Wash. 1922) (stating interlocutory appeals are not reviewable until final judgment); Kerfoot v. Dandridge, 71 S.E. 396, 397 (W. Va. 1911) (holding interlocutory order not appealable until final judgment); Willing v. Porter, 63 N.W.2d 729, 732 (Wis. 1954) (stating appeal before final judgment must be dismissed for want of jurisdiction); Hahn v. Citizens’ State Bank, 171 P. 889, 909-91 (Wyo. 1918) (stating final judgment must be entered before appeal can be taken). But see Glover v. Baker, 81 A. 1081, 1082 (N.H. 1911) (allowing review of
peal could not be taken until all of the claims had been finally determined as to all of the defendants.19

The policy behind the final judgment rule was to promote judicial efficiency and economy by preventing appellate review before final judgment had been rendered in a case.20 Ideally, the rule lightened the appellate courts' dockets because all of a party's objections would be consolidated into one appeal, and final disposition in the trial court through settlement or favorable judgment often precluded appeal.21

With the adoption of the Federal Rules of Civil Procedure in 1938, the nature of civil actions grew more complex because the Rules permitted liberal joinder of parties and claims in a single action.22 Drafters of the Rules recognized that postponing an appeal until after a final judgment could result in undue hardship to certain parties.23 At the same time, the drafters did not want to encourage piecemeal litigation24 and sacrifice judicial efficiency.25

As a result, Rule 54(b) was included in the federal rules.26 The

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22. WRIGHT, supra note 19, § 2653. Many of the rules encourage joinder of parties and claims. E.g., FED. R. CIV. P. 18(a) (stating a party may join as many claims as a party has against an opposing party); FED. R. CIV. P. 19(a) (stating additional parties must be included in the action if feasible).

23. Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 432-36 (1956). Hardship most often occurs when a judge issues an order or judgment at the early stages of litigation and several years pass before the entire lawsuit is completed. WRIGHT, supra note 19, § 2654. Postponing an appeal under these circumstances may result in unnecessary delay for those parties who have received a final judgment on their claim. Id.

24. Supra note 3.

25. Sears, 351 U.S. at 432.

26. WRIGHT, supra note 19, § 2654. Originally, the rule only attempted to define what would constitute a final judgment when an action involved multiple claims. 6 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE ¶ 54.01[1], at 54-9 (2d ed. 1996). It failed to alleviate the problems associated with complex litigation because many judges interpreted the language to simply restate the final judgment rule. Id. The rule was then amended in 1946 to allow a judge to certify an appeal after entering judgment on a particular claim in a multiclaim action. Id. at 54-10 to 54-11. In 1961, the rule was amended again to include actions involving multiple parties and remains unchanged. Id. at 54-11 to 54-12.
rule permits a trial judge to enter judgment on one or more, but less than all, of the claims or parties involved in an action. Once judgment has been entered upon a particular claim, the trial judge may certify the order as immediately appealable by making an express determination that there is no just reason to delay. Rule 54(b) drafters intended to prevent piecemeal litigation while protecting parties from hardship that may result from adjudication of less than all of the claims or parties.

B. Interlocutory Appeals Recognized In Minnesota

Faced with the same increase in complex civil litigation at the state level, Minnesota adopted Minnesota Rule of Civil Procedure 54.02 in 1951. Similar to Federal Rule 54(b), the rule gives trial court judges discretion to identify certain interlocutory orders in multi-party suits as immediately appealable by making an express determination that there is no just reason to delay.

While Rule 54.02 provides one basis for appellate jurisdiction, Minnesota case law has recognized additional instances in which an

27. Sears, 351 U.S. at 432.
28. Id. at 435.
29. Id. at 434. In addition to Rule 54(b), the federal system developed other exceptions to the final judgment rule. Wright, supra note 19, § 2658. Interlocutory appeals may be taken from orders involving injunctions, receiverships, admiralty cases, and patent infringement cases. 28 U.S.C. § 1292(a) (1997). Interlocutory appeals are also allowed when a trial judge certifies that the order should be appealed because it involves a controlling question of law. 28 U.S.C. § 1292(b) (1997). The judicially-created collateral order doctrine allows interlocutory appeals to be taken if the trial court's decision determines a matter unrelated to the merits of the action but is too important to be denied review. Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949).

30. Minn. R. Civ. P. 54.02; 2 David F. Herr & Roger S. Haydock, Civil Rules Annnotated § 54.9 (3d ed. 1998). Around the same time period, the majority of other jurisdictions adopted rules governing suits involving the adjudication of less than all of the parties or claims involved. Ala. R. Civ. P. 54(b); Alaska R. Civ. P. 54(b); Ariz. R. Civ. P. 54(b); Ark. R. Civ. P. 54(b); Colo. R. Civ. P. 54(b); Del. R. Ch. Ct. 54(b); D.C. R. Civ. P. 54(b); Ga. R. Civ. Prac. Code § 9-11-54(b); Haw. R. Civ. P. 54(b); Idaho R. Civ. P. 54(b); Ill. S. Ct. R. 304(a); Ind. R. Civ. P. 54(b); Kan. Civ. Proc. Code Ann. § 60-254(b) (West 1999); Ky. R. Civ. P. 54.02; Me. R. Civ. P. 54(b); Mass. R. Civ. P. 54(b); Mich. R. Civ. P. 2.604; Miss. R. Civ. P. 54(b); Mo. R. Civ. P. 74.01; Mont. R. Civ. P. 54(b); Mich. R. Civ. P. 54(b); Nev. R. Civ. P. 54(b); N.M. R. Civ. P. 1-054; N.C. R. Civ. P. 54(b); N.D. R. Civ. P. 54(b); Ohio R. Civ. P. 54(b); Okla. Stat. tit. 12, § 994 (2000); Or. R. Civ. P. 67(b); Pa. R. App. P. 341(c); R.I. R. Civ. P. 54(b); S.C. R. Civ. P. 54(b); S.D. Codified Laws § 15-6-54(b) (Michie 1999); Tenn. R. Civ. P. 62.09; Tex. R. Civ. P. 301; Utah R. Civ. P. 54(b); Vt. R. Civ. P. 54(b); Wash. Super. Ct. Civ. R. 54(b); W. Va. R. Civ. P. 54(b); Wyo. R. Civ. P. 54(b).

31. Herr & Haydock, supra note 30, § 54.9.
appeal may be allowed, absent certification by the trial judge. For instance, in *Anderson v. City of Hopkins*, the Minnesota Supreme Court recognized the federal system’s collateral order doctrine and allowed an immediate appeal from an order denying a motion for summary judgment based on a claim of government immunity, without an express determination by the trial court.

32. *Id.* at § 54.10. In addition to case law, statutory provisions allow interlocutory appeals from orders involving an injunction, vacating or sustaining an attachment, and denying a new trial. MINN. R. APP. P. 103.03. Interlocutory appeals are also allowed if the judge certifies that the question is important and doubtful. *Id.*

33. 393 N.W.2d 363 (Minn. 1986).

34. *Supra* note 29.

In *Hunt v. Nevada State Bank*, the court held that dismissal for lack of personal jurisdiction is immediately appealable without certification by the trial court. The court added another exception...
Ex parte Paul Maclean Land Serv., Inc., 613 So. 2d 1284, 1286 (Ala. 1993) (allowing an appeal from the denial of a motion to dismiss based on lack of personal jurisdiction); Longo v. Longo, 515 So. 2d 1013, 1014 (Fla. Dist. Ct. App. 1987) (stating an order denying a motion to dismiss for lack of jurisdiction over person is appealable); Healy v. Vaupel, 549 N.E.2d 1240, 1246 (Ill. 1990) (stating party may seek appellate review of court order denying motion to dismiss based on personal jurisdiction); Lee v. Goshen Rubber Co., 635 N.E.2d 214, 215 (Ind. Ct. App. 1994) (reviewing an interlocutory appeal from the denial of defendant’s motion to dismiss based on lack of personal jurisdiction); Bankers Trust Co. v. Fidata Trust Co. N.Y., 452 N.W.2d 411, 412 (Iowa 1990) (reviewing appeal from order denying motion to dismiss for lack of personal jurisdiction before final judgment); Mosier v. Kinley, 702 A.2d 803, 809 (N.H. 1997) (holding defendant must immediately appeal an order denying a motion to dismiss based on lack of personal jurisdiction); State ex rel. Anaya v. Columbia Research Corp., 583 P.2d 468, 468 (N.M. 1978) (allowing an appeal from order denying motion to dismiss based on lack of personal jurisdiction); Healy v. Spitalnik, 414 N.Y.S.2d 8, 9 (N.Y. App. Div. 1979) (reviewing lower court’s denial of motion to dismiss based on lack of subject matter jurisdiction before final judgment); Love v. Moore, 291 S.E.2d 141, 146 (N.C. 1982) (stating party may appeal an adverse ruling as to jurisdiction over the person). The majority of jurisdictions ruling on this issue oppose Minnesota and hold that an order denying a motion to dismiss based on lack of personal jurisdiction is not immediately appealable. Hydraulic Press Mfg. Co. v. Moore, 185 F.2d 800, 803 (8th Cir. 1950) (holding order denying motion to quash service of process is not immediately appealable); Jacobson v. N. Trust Co., 234 P. 563, 563 (Ariz. 1925) (refusing to review appeal from order denying summary judgment based on personal jurisdiction); Hogue v. Hogue, 208 S.W. 579, 581 (Ark. 1919) (stating there is no appeal from refusal to quash a summons); Bing v. Chan Lai Yung Gee, 202 P.2d 360, 361 (Cal. Ct. App. 1949) (stating the denial of motion contesting jurisdiction is not appealable); Smardo v. Huisenga, 412 P.2d 431, 432 (Colo. 1966) (holding that denial of motion to dismiss for lack of personal jurisdiction is not immediately appealable); Crown Oil and Wax Co. of Del. v. Safeco Ins. Co. of Am., 429 A.2d 1376, 1379 (D.C. 1981) (refusing to entertain appeal from denial of motion to dismiss for lack of personal jurisdiction); Venus Foods v. Dist. Court of Eleventh Judicial Dist., 181 P.2d 775, 776 (Idaho 1947) (holding that order denying motion to quash summons was not appealable); Runnels v. Montgomery Ward & Co., 195 P.2d 571, 571-73 (Kan. 1948) (holding that an order overruling a motion to dismiss an action is not appealable); Hubbard v. Hubbard, 197 S.W.2d 923, 924 (Ky. 1946) (holding party may not immediately appeal an adverse ruling on personal jurisdiction); Woodcock v. Crehan, 28 So. 2d 61, 61 (La. Ct. App. 1946) (stating that an order denying a motion to dismiss based on lack of personal jurisdiction is not immediately appealable); Breus v. Bezborodko, 704 A.2d 338, 339 (Me. 1997) (holding that denial of motion to dismiss for lack of personal jurisdiction is not immediately appealable); Guerreni v. Sainsbury, 114 A. 874, 876 (Md. 1921) (ruling that no interlocutory appeal can be taken from order overruling a motion to quash summons based on lack of personal jurisdiction); Holste v. Burlington N. R.R. Co., 592 N.W.2d 894, 904 (Neb. 1999) (holding that an order overruling a challenge to personal jurisdiction is not appealable); Klepper v. Klepper, 271 P. 396, 396-37 (Nev. 1928) (stating that no appeal lies from order denying motion to quash summons and service); Blue Arm v. Volk, 254 N.W.2d 427, 428 (N.D. 1977) (stating that order denying motion for dismissal based on lack of personal jurisdiction was not appealable); State ex rel. Bradford v. Trumbull County Court, 597 N.E.2d 116, 117 (Ohio 1992) (stating that party may not immediately appeal lower court’s ruling on jurisdiction until after final judgment);
in *McGowan v. Our Savior's Lutheran Church*\(^38\) when it allowed an immediate appeal from an order denying summary judgment based on a lack of subject matter jurisdiction.\(^39\)

Shaw v. Davis, 62 P.2d 1259, 1260-61 (Okla. 1936) (holding that court order overruling a motion objecting to jurisdiction is not appealable before final judgment); Fournier v. Standard Wholesale Co., 279 A.2d 403, 404 (R.I. 1971) (holding that denial of motion to dismiss for lack of personal jurisdiction lacked finality to justify appellate review); Mid-State Distrib., Inc. v. Century Imps., Inc., 426 S.E.2d 777, 781 (S.C. 1993) (holding that denial of motion to dismiss for lack of personal jurisdiction is interlocutory and not appealable); De Bord v. Brandt, 206 N.W. 925, 926 (S.D. 1926) (refusing to hear appeal from order denying motion to dismiss based on insufficient service of process); CSR Ltd. v. Link, 925 S.W.2d 591, 597 (Tex. 1996) (allowing immediate review of order denying motion to dismiss for lack of personal jurisdiction only upon showing that ordinary appeal would be inadequate); State Tax Comm'n v. Larsen, 110 P.2d 558, 560 (Utah 1941) (holding order objecting to personal jurisdiction not appealable before final judgment); Barnes v. Thomas, 635 P.2d 135, 136-37 (Wash. 1981) (stating immediate review of order denying motion to dismiss for lack of personal jurisdiction is allowable only when appeal cannot provide an adequate remedy); Heaton v. Larsen, 294 N.W.2d 15, 24 (Wis. 1980) (holding that order denying motion to dismiss on ground of lack of personal jurisdiction is not final and therefore not appealable).

38. 527 N.W.2d 830 (Minn. 1995).
Recently, the court of appeals in Semiconductor Automation, Inc. v. Lloyds of London went one step further by requiring a plaintiff to immediately appeal the dismissal for lack of subject matter jurisdiction of one defendant in a multi-party suit absent certification by the trial court. With this decision, the court declared that all appeals based on lack of jurisdiction must be immediately appealed independent of Rule 54.02—a holding which has since been overruled by the Minnesota Supreme Court in Engvall v. Soo Line Railroad Co.

III. THE ENGVALL DECISION

A. The Facts


In response, Soo Line filed a third-party complaint against General Motors Corporation (hereinafter “GM”), the locomotive's

(refusing to hear interlocutory appeal from denial of motion to dismiss based on lack of subject matter jurisdiction); Wells v. Wells, 509 S.E.2d 549, 551-52 (Va. Ct. App. 1999) (holding denial of motion to dismiss based on subject matter jurisdiction was not immediately appealable); In re Greybull Valley Irrigation Dist., 71 P.2d 801, 802 (Wyo. 1937) (dismissing interlocutory appeal from order overruling objections to the court’s jurisdiction).


41. Semiconductor, 543 N.W.2d at 124. South Carolina is the only other jurisdiction to adopt a holding identical to Semiconductor. Lebovitz v. Mudd, 347 S.E.2d 94, 96 (S.C. 1986) (stating an order granting a motion to dismiss based on lack of subject matter jurisdiction is directly appealable absent certification by the trial court because it affects a substantial right).

42. Semiconductor, 543 N.W.2d at 123.

43. 605 N.W.2d 738 (Minn. 2000).

44. Engvall, 605 N.W.2d at 739. The facts are unclear as to whether Engvall injured his back while tying down a handbrake to a locomotive or using a handwheel to apply a handbrake. Id. However, both the appellant’s brief and respondent’s brief indicate the injury occurred while Engvall was tying down the handbrake. Appellant’s Brief at 3, Engvall (No. C6-99-64); Respondent’s Brief at 3, Engvall (No. C6-99-64).

manufacturer, seeking contribution or indemnity, and alleging GM negligently designed and manufactured the locomotive’s handbrake. GM moved for summary judgment on the grounds of federal preemption. The district court granted GM’s motion on August 13, 1998.

Two months later, Soo Line and Engvall entered into a stipulation to dismiss Engvall’s claims against Soo Line. The trial court subsequently entered final judgment.

On January 8, 1999, Soo Line appealed the district court’s grant of summary judgment in favor of GM. The court of appeals ruled Soo Line’s appeal was untimely because dismissal for lack of subject matter jurisdiction must be appealed within ninety days after entry of the judgment. This is true even when the district court does not expressly determine that there is no just reason to delay the appeal.

46. Engvall, 605 N.W.2d at 740. Indemnity and contribution are remedies based on equitable principles that allow one tortfeasor to secure restitution from another tortfeasor when he or she has paid more than his or her just share of liability. White v. Johnson, 272 Minn. 363, 367, 137 N.W.2d 674, 677 (1965). Indemnity allows the entire loss to be shifted to another tortfeasor. Contribution allows one tortfeasor to recover a proportionate share from the other tortfeasor.

47. Engvall, 605 N.W.2d at 739-40.


49. Engvall, 605 N.W.2d at 740.

50. MINN. R. Civ. P. 41.01(a). This rule allows parties to voluntarily dismiss an action by entering into a stipulation. See also Schoenfeld v. Buker, 262 Minn. 122, 131-32, 114 N.W.2d 560, 566-67 (1962). A stipulation acts as an agreement between the two parties and has the same effect as a valid and binding contract.

51. Engvall, 605 N.W.2d at 740.

52. Id.

53. Id.

54. Id. In deciding the case, the court of appeals determined that judgment for federal preemption constituted a lack of subject matter jurisdiction.

55. MINN. R. APP. P. 104.01 (1998) (requiring a party to file an appeal within 90 days after entry of judgment). The rule has since been amended and now requires an appeal to be taken from a judgment “within 60 days after service by any party of written notice of its filing.” MINN. R. APP. P. 104.01(1) (2000).

56. Engvall, 605 N.W.2d at 740.

57. Id. “Implicit in this ruling is the conclusion that an appeal from an interlocutory judgment is mandatory.” Id. at 743. The appeals court relied on its decision in Semiconductor to reach this conclusion.
B. The Court's Analysis

The supreme court in Engvall reversed the court of appeals. The supreme court first concluded that Soo Line filed a timely appeal because an interlocutory order dismissing a party based on lack of subject matter jurisdiction is not immediately appealable, absent an express Rule 54.02 determination. The court distinguished the present case from its earlier holding in McGowan. The Engvall court noted that McGowan "addressed the policy concerns of a party who is burdened by potentially unnecessary litigation when a motion to dismiss based on a lack of subject matter jurisdiction is denied." The concerns present in McGowan do not exist when, as in this case, a summary judgment motion is granted. Thus, the court found McGowan inapplicable.

The Engvall court further reasoned that allowing an appeal would undermine the policy against piecemeal litigation. The supreme court presumed the court of appeals' ruling would force future appellants to guess when and from what to appeal, resulting in numerous protective interlocutory appeals. Thus, the supreme court concluded that GM's dismissal was not immediately appealable, absent an express Rule 54.02 determination.

The Engvall court further concluded that the court of appeals erred in ruling that an appeal from an interlocutory judgment that does not require an express certification by the trial court is mandatory rather than permissive. The court deemed the court of appeals' ruling contrary to the collateral order doctrine and the policy against piecemeal litigation. Thus, the court concluded that failure to appeal from an interlocutory order does not result in

58. Id. at 739.
59. Id. at 744. See also supra Part II.B.
60. Id. For a discussion of McGowan, see supra note 39 and accompanying text.
61. Engvall, 605 N.W.2d at 743-44.
62. Id. at 744.
63. Id.
64. Id.
65. Id.
66. Id.
67. Id. at 745.
68. Supra note 9.
69. Supra note 8.
70. Supra note 29.
71. Engvall, 605 N.W.2d at 745. Classifying immediately appealable interlocutory judgments as permissive allows appellants to wait to appeal from the final judgment, which could reduce the number of interlocutory appeals. Id.
IV. ANALYSIS OF THE ENGVALL DECISION

The court in Engvall was presented with an opportunity to clarify which types of interlocutory judgments can be appealed without an express Rule 54.02 determination and when such appeals can be taken. The court used this opportunity to articulate a clear rule that promotes judicial efficiency and economy.

A. The Minnesota Supreme Court Promulgated A Clear Standard

With this decision, the court gave litigators a clear standard to follow when considering an appeal from an interlocutory judgment. If the supreme court had affirmed the lower court’s ruling, litigators may have questioned whether the holding extends the right to immediately appeal grants of summary judgment based on personal jurisdiction and government immunity in multiparty suits. The court, however, avoided uncertainty by clearly stating that it will not allow interlocutory appeals without certification by the trial judge when a motion for summary judgment is granted in a multiparty suit.

The court also avoided confusion by overruling the problematic Semiconductor decision. In Semiconductor, the court of appeals indicated, but did not explicitly state, that interlocutory appeals are mandatory. The decision served to confuse and contradict Minnesota’s rules governing the time for taking an appeal. The su-

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72. Id. With this ruling, the court not only reversed the lower court’s decision, but it also overruled the lower court’s decision in Semiconductor. Id.
73. Id. at 744.
74. Id.
75. Semiconductor, 543 N.W.2d at 123. The court never used the terms permissive or mandatory. Id. Instead, it simply stated that the plaintiff had ninety days to appeal an order dismissing one of the defendants, regardless of whether the trial ended before that time. Id.
76. MINN. R. APP. P. 104.01, subd. 1 (2000). The rule states in pertinent part: Unless a different time is provided by statute, an appeal may be taken...from an appealable order within 60 days after service by any party of written notice of its filing. An appeal may be taken from a judgment entered pursuant to Rule 54.02, Minnesota Rules of Civil Procedure, within 60 days of the entry of the judgment only if the trial court makes an express determination that there is no just reason for delay and expressly directs the entry of a final judgment. The time to appeal from any other judgment entered pursuant to Rule 54.02 shall not begin to run until the entry of a judgment which adjudicates all the claims and
The supreme court clarified the possible contradiction by explicitly classifying interlocutory appeals as permissive, thereby giving litigators a clear indication of when to appeal an interlocutory order. 77

B. The Decision Promotes Judicial Efficiency And Economy

The supreme court’s decision helps promote judicial efficiency and economy in three ways. First, the opinion’s clarity is likely to reduce litigation because parties are now less likely to dispute claims surrounding interlocutory appeals. If the supreme court decided to uphold the ambiguous Semiconductor decision, 78 litigators may have been forced to take interlocutory appeals in an attempt to decipher the boundaries of the court’s holding—a result many courts seek to avoid. 79

Second, the supreme court’s decision limited the number of interlocutory appeals parties may take, which prevents piecemeal litigation. 80 The policy against piecemeal litigation has long been the means by which Minnesota and the majority of other jurisdictions attempt to achieve a greater degree of judicial efficiency and economy. 81 Requiring a party to include all objections to the trial rights and liabilities of the remaining parties.

Id. (emphasis added). When referring to the time to take an appeal, the statute uses the term may rather than shall, indicating that appeals from interlocutory judgments are permissive and not mandatory. Anderson v. Yungkau, 329 U.S. 482, 485 (1947) (interpreting may to be permissive and shall to be mandatory when appearing in a statute); see also BLACK’S LAW DICTIONARY 979, 1375 (6th ed. 1990) (stating may “usually is employed to imply permissive, optional or discretionary, and not mandatory action or conduct” while shall “is generally imperative or mandatory”); Escoe v. Zerbst, 295 U.S. 490, 493 (1935) (stating shall is ordinarily “the language of command”). In other words, the statute does not require a party to appeal interlocutory orders within sixty days of a judgment; it only grants a party permission to appeal within sixty days. MINN. R. APP. P. 104.01, subd. 1 (2000). If the drafters intended to force parties to appeal all appealable interlocutory judgments within the sixty day time period, they would have substituted the word may with shall or stated that a party will lose the right to appeal interlocutory orders if not perfected within sixty days of the ruling.

77. Engvall, 605 N.W.2d at 745.
78. Supra note 75 and accompanying text.
79. See generally ROBERT A. KATZMANN & MICHAEL TONRY, MANAGING APPEALS IN FEDERAL COURTS 1 (Federal Judicial Center 1988) (noting the explosion of filings in the courts of appeals since the 1970s and detailing the various ways courts have attempted to deal with the problem); APPELLATE DELAY REDUCTION COMMITTEE, STANDARDS RELATING TO APPELLATE DELAY REDUCTION 3 (American Bar Association 1988) (recognizing the high volume of cases and suggesting ways to reduce delay in administering justice).
80. Engvall, 605 N.W.2d at 744.
81. Emme v. C.O.M.B., Inc., 418 N.W.2d 176, 179 (Minn. 1988) (stating the
court's ruling allows an appellate court to consolidate its resources into one appeal rather than several appeals, each requiring its own set of briefs, oral arguments, opinions and copies of the record. Furthermore, many adverse rulings will never require appellate review because a losing party on a motion may ultimately prevail at trial and thus will not seek an appeal.

In response, one could argue that freely allowing interlocutory appeals promotes judicial efficiency and provides for a fairer trial. However, studies indicate that such a practice overcrowds the appellate courts and diminishes their effectiveness. Indeed, purpose of preventing piecemeal litigation is to conserve judicial resources and expedite trial proceedings; see also Friedenthal et al., supra note 3, § 13.1, at 584 (stating the rationale behind requiring parties to wait until final judgment has been rendered to appeal rests on a desire to achieve judicial economy); Harlon L. Dalton, Taking the Right to Appeal (More or Less) Seriously, 95 Yale L.J. 62, 64 (1985) (advocating for a reduction of appeals as a remedy for reducing the overcrowded dockets of appellate courts); Judge Donald Lay, A Proposal for Discretionary Review in Federal Courts of Appeals, 34 Sw. L.J. 1151, 1155-58 (1981) (arguing for a reduction in appeals to promote judicial efficiency and proposing to give appellate courts the discretion to hear only the most deserving appeals).

82. Friedenthal et al., supra note 3, § 13.1, at 584. The preparation of briefs, records, oral arguments, and opinions is extremely costly, and a reduction in unnecessary interlocutory appeals would reduce these judicial expenses. Bertram Willcox et al., Justice Lost – By What Appellate Papers Cost, 33 N.Y.U. L. Rev. 934, 936 (1958) (noting the high costs of appeals); see also Sam E. Haddon, Note, Cost of Appeal, 27 Mont. L. Rev. 49, 49-50 (1965) (discussing the expenses associated with appeals).

83. Friedenthal et al., supra note 3, § 13.1, at 584. Other reasons for adhering to the final judgment rule include: 1) The appellate court has a broader perspective when reviewing the various rulings being challenged; 2) The trial process proceeds more swiftly; 3) The authority of the trial judge receives an increased amount of respect; 4) Parties are prevented from delaying the trial or harassing an opposing party by appealing every adverse ruling; 5) The rule achieves certainty and predictability because lawyers know what may and may not be appealed. Id.

84. Edson R. Sunderland, The Problem of Appellate Review, 5 Tex. L. Rev. 126, 127 (1926). Sunderland argues that eliminating restrictions on interlocutory appeals will decrease litigation over the question of whether parties may or may not appeal particular cases. Id. Correcting the errors below as they occur may also aid in reaching a verdict that is less likely to be reversed if appealed, thus avoiding a wasted trial. Friedenthal et al., supra note 3, § 13.1, at 584.

85. Jill Paradise Butler et al., Project, The Appellate Division of the Supreme Court of New York: An Empirical Study of Its Powers and Functions as an Intermediate State Court, 47 Fordham L. Rev. 929, 1003 (1979) (stating that many jurisdictions that allow free interlocutory appeals, such as New York, believe broad powers of review enable an appellate court to ensure that the litigants are accorded substantial justice).

86. Id. at 986. The Appellate Division of New York has one of the largest caseloads in the United States, which poses a serious threat to the performance of the court's functions. Id. A limit on interlocutory appeals would reduce the caseload, making the court more efficient and reducing the cost to litigants. Id. at
with already burgeoning appellate caseloads, increases in interlocutory appeals will delay the dispute resolution and increase the costs of rendering decisions at both the appellate and trial level.

Finally, the court achieved a greater degree of judicial efficiency and economy by ruling that interlocutory appeals that do not require a Rule 54.02 determination are permissive rather than mandatory. This ruling is followed by the majority of jurisdictions. Classifying interlocutory appeals as permissive allows appel-

1006-07; see also ROBERT MACCRATE ET AL., APPELLATE JUSTICE IN NEW YORK 87 (1982) (stating interlocutory appeals take up a significant amount of an appellate court’s caseload and are often used as a delay tactic to disrupt the trial); David Scheffel, Comment, Interlocutory Appeals in New York - Time Has Come For a More Efficient Approach, 16 PACE L. REV. 607, 629 (1996) (examining the Report of the Appellate Division Task Force of 1989 and concluding that the New York Appellate Division faces an overcrowded caseload, resulting in litigants having to wait an unreasonably long time for a ruling).

87. Supra note 79.

88. Irving R. Kaufman, New Remedies for the Next Century of Judicial Reform: Time as the Greatest Innovator, 57 FORDHAM L. REV. 253, 255 (1988) (stating delay in the resolution of disputes is the most visible symptom of overcrowding); LARRY C. FARMER, APPEALS EXPEDITING SYSTEMS: AN EVALUATION OF SECOND AND EIGHTH CIRCUIT PROCEDURES 1 (Federal Judicial Center 1981) (noting the disruption and delays of appellate courts are results of an overcrowded docket); THE AMERICAN BAR ASSOCIATION TASK FORCE ON APPELLATE PROCEDURE, INTRODUCTION TO EFFICIENCY AND JUSTICE IN APPEALS: METHODS AND SELECTED MATERIALS 1 (American Bar Association 1977) (stating the consequences of the expanding workload of appellate courts is increasing delays and rising costs).


90. E.g., Sierra Club v. Robertson, 28 F.3d 753, 756 n.3 (8th Cir. 1994) (stating interlocutory appeals are permissive); Robinson v. Computer Servicenters, Inc., 360 So. 2d 299, 302 (Ala. 1978) (stating certain interlocutory appeals are permissive); Orem v. Moore, 272 S.W.2d 60, 61 (Ark. 1954) (holding interlocutory appeal may be taken before or after final judgment); Walton v. State, 968 P.2d 636, 641 (Colo. 1998) (stating failure to take interlocutory appeal does not preclude ruling on issue after final judgment); Perky v. Perky, 156 So. 308, 309 (Fla. 1934) (stating appellate court may consider interlocutory orders that might have been separately appealed from before final decree); Nat’l Found. Co. v. Post, Buckley, Schuh & Jernigan, Inc., 465 S.E.2d 726, 728 (Ga. Ct. App. 1995) (holding interlocutory appeal of an order granting partial summary judgment is permissive); Hay v. McDaniel, 59 N.E. 1064, 1064 (Ind. 1901) (allowing plaintiff to interlocutory order to appoint a receiver before final judgment or after final judgment); St. David’s Episcopal Church v. Westboro Baptist Church, Inc., 921 P.2d 821, 833 (Kan. Ct. App. 1996) (holding party was not required to appeal an interlocutory decree before final judgment); Simeon v. Bd. of Levee Comm’r of Orleans Levee Dist., 124 So. 853, 856 (La. Ct. App. 1929) (ruling interlocutory appeal could be taken before or after final judgment); Packaging Indus. Group, Inc. v. Cheney, 405 N.E.2d 106, 109 (Mass. 1980) (holding interlocutory appeal is not mandatory); Dep’t of Transp. v. Rowe, 521 S.E.2d 707, 710 (N.C. 1999) (classifying interlocutory appeal as permissive); Commonwealth v. Jackson, 598 A.2d 568, 572 (Pa. Super. Ct. 1991) (holding interlocutory appeals are permissive); Brooks v.
lants to wait to appeal from the final judgment if they so chose, which could reduce the number of interlocutory appeals heard by Minnesota’s appellate courts. 91 **Semiconductor** penalized litigants who waited until after final judgment had been entered to take an appeal. 92 The **Semiconductor** decision opposed Minnesota’s policy against piecemeal litigation. 93

Critics may argue that forcing litigants to immediately appeal interlocutory orders makes the judicial system more efficient because appellants will be forced to appeal a ruling that could eliminate the need for a trial if reversed. 94 However, this argument fails when dealing with multiparty litigation because the trial will continue regardless of the presence of a third party. Furthermore, the majority of lower court decisions are affirmed on appeal, which indicates that forcing appellants to appeal an adverse interlocutory ruling will not stop the majority of cases from continuing. 95 Thus, classifying appealable interlocutory orders as mandatory would not make the appellate system more efficient.

V. CONCLUSION

The **Engvall** decision helped promote a greater degree of judicial efficiency and economy in Minnesota. It limited the number of instances when a party may take an interlocutory appeal and classified all interlocutory appeals as permissive. It also provided a clear

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91. **Engvall**, 605 N.W.2d at 745.


93. **Emme**, 418 N.W.2d at 179 (stating “the thrust of the rules governing the appellate process is that appeals should not be brought or considered piecemeal”). The decision also opposes the reasons for adopting MINN. R. CIV. P. 54.02. Novus Equities Corp. v. EM-TY P'ship, 381 N.W.2d 426, 428 (Minn. 1986) (stating the primary goal of MINN. R. CIV. P. 54.02 is to reduce piecemeal litigation; see also **HERR & HAYDOCK**, supra note 30, § 54.9 (stating that the intent of Rule 54.02 is to prevent piecemeal litigation).

94. **FRIEDENTHAL ET AL.**, supra note 3, § 13.1, at 584-85; Botler et al., supra note 85, at 1003.

95. Botler et al., supra note 85, at 990-91 (arguing to restrict interlocutory appeals because so few intermediate orders are reversed, based on a 1975 statistic showing New York appellate courts have an approximately seventy-five percent affirmation rate).
standard that helps guide litigators when considering interlocutory appeals. Indeed, by overruling the Minnesota Court of Appeals’ erroneous decision in *Semiconductor*, the Minnesota Supreme Court helped make civil procedure more certain and efficient.