**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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| RISEDELAWARE INC., *et al.*, | : | |
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| Plaintiffs, | : | |
| | : | |
| v. | : | C.A. No. N22C-09-526-CLS |
| | : | |
| SECRETARY CLAIRE DEMATTEIS in her official capacity as Secretary of the Delaware Department of Human Resources and Co-Chair of the State Employee Benefits Committee, *et al.*, | : | |
| | : | |
| Defendants. | : | |

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ENTRY OF FINAL JUDGMENT OR IN THE ALTERNATIVE, FOR ENTRY OF PARTIAL FINAL JUDGMENT PURSUANT TO SUPERIOR COURT RULE 54(b)**

Defendants' Motion for Entry of Final Judgment ("Motion") should be denied for lack of jurisdiction in the Superior Court because the action has been transferred to the Court of Chancery. Alternatively, even if *arguendo* this Court somehow retained jurisdiction, a final or Rule 54(b) partial judgment should not be entered.

## I. THIS COURT NO LONGER HAS JURISDICTION.

1. This Court's February 8, 2023 Order denying Plaintiffs' Petition for Attorneys' Fees ("Fees Petition") by its terms[1] determined that the Superior Court

[1] The Court "is not permitted to award attorneys' fees under [Del. Code] Title 29 because enforcement of open meeting laws is given to the Court of Chancery, as such this Court may not award attorney fees and costs." D.I. 56 at ¶10 (Trans ID 69104306) (footnote omitted).

lacked jurisdiction to decide the aspects of the Fees Petition that belonged in equity. On February 15, Plaintiffs filed their Notification Of Election To Remove And Transfer this action to the Court of Chancery pursuant to 10 *Del. C.* §1902 ("Election") to allow the Court of Chancery to hear and determine the equity-based fee issues and enter final judgment (Trans. Id. 69157466). Section 1902 sets forth the requirements to effectuate transfer:

> No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, [a] *within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer,* [b] *discharges all costs accrued in the first court, and* [c] *makes the usual deposit for costs in the second court*.

(emphasis added). These statutory requirements have been satisfied: (a) within 60 days of the February 8 Order, on February 15, Plaintiffs filed in the Superior Court their written Election; (b) Plaintiffs have discharged all costs accrued in this action; and (c) no further deposit for costs in the Court of Chancery is required.

2. Plaintiffs filed and served a Verified Petition in the Court of Chancery (*see* Chancery Court Docket, attached hereto as Exhibit A) which asks that Court to hear and determine the equity-related issues of fees that this Court declined to decide, and then to enter final judgment. On May 2, Defendants filed a motion to

dismiss the Verified Petition. *See id*. Accordingly, the Court of Chancery will be deciding its own jurisdiction.

3. As a result of the §1902 transfer, the Superior Court has lost jurisdiction. *See West v. Access Control Related Enterprises*, 2023 WL 2920675, at *5 (Del.);[2] *Adkins v. Carter*, 1995 WL 156263, at *1 (Del. Super.) (Court of Common Pleas lost jurisdiction when default judgment transferred to Superior Court); *White v. ABCO Eng'g Corp.*, 199 F.3d 140, 143, n.4 (3d Cir. 1999) (when transfer is complete, "the transferor court—and the appellate court that has jurisdiction over it—lose all jurisdiction over the case and may not proceed further with regard to it."). Accordingly, Defendants' Motion should be denied.

## II. NO JUDGMENT ENTERED BY THE COURT WOULD BE FINAL.

4. Even if it were assumed *arguendo* that this Court had jurisdiction to act on Defendants' Motion, no judgment it now entered would be "final." The Delaware Supreme Court has consistently held that, where issues of attorneys' fees remain, a trial court's ruling on the merits is not final and appealable. *Moskowitz v. Moskowitz*, 1991 WL 32164, at *1 (Del. 1991); *CCSB Financial Corp. v. Totta*, 2022 WL 4124751, at *1 (Del. 2022). This precept is grounded on the Supreme Court's strong

[2] As the *West* Court explained: "It is well-established that a transferor court loses jurisdiction to reconsider its order for transfer once the records in the transferred action are physically transferred to and received by the transferee court." *Id*. (citations and internal quotation omitted). In this case, the Register in Chancery informed Plaintiffs' counsel that: the record could not be physically transferred; the case in Superior Court would be considered closed; and any documents the parties wanted considered by the Court of Chancery should be attached as exhibits to filings therein.

policy disfavoring piecemeal appeals. *See Simmons v. Simmons*, 1992 WL 397461, at *1 (Del. 1992) ("Appellant's contention that the motion for legal expenses is a separate matter, the pendency of which does not distract from the 'finality' of the custody/visitation order, is misguided and fails to appreciate the strong policy of this Court not to accept piecemeal appeals from a single proceeding in a trial court.")

5. Because jurisdiction over equitable fee issues integrally tied to the merits are now vested in the Court of Chancery, entry of "Final Judgment" would only give Defendants one more opportunity for folly– enabling a second improvident appeal that would again waste party and judicial resources.

## III. DEFENDANTS HAVE NOT MET THE HIGH BAR FOR ENTRY OF A PARTIAL FINAL JUDGMENT UNDER RULE 54(b).

6. Likewise, even assuming *arguendo* this Court had jurisdiction, a judgment under Superior Court Rule 54(b) is not justified. Rule 54(b) authorizes entry of a "partial" final judgment, *i.e.*, on fewer than all claims, but only if "there is no just reason for delaying an appeal." *Johnson v. Preferred Professional Ins. Co.*, 2015 WL 413608, at *2 (Del. Ch.) (citation omitted). To decide if "just reason for delay" exists, "the Court must consider: '(1) the hardship or injustice suffered by the moving party in the absence of the final judgment; and (2) the interest of judicial administration and judicial economy.'" *Boeing Co. v. Spirit Aerosystems, Inc.*, 2017 WL 3233068, at *1 (Del. Super.) (citation omitted). While this decision is left to the Court's discretion, "the long established policy against piecemeal appeals requires

this Court to exercise that discretion 'sparingly,' 'cautiously,' and 'frugally.'" *Id*. The potential prejudice to movant from delaying entry of judgement "must be severe." *Johnson*, 2015 WL 413608, at *4.

7. In *Boeing*, this Court denied the plaintiff's request to enter final judgment as to the liability issues resolved on summary judgment, where the amount of fees and costs due to defendant had yet to be determined. The Court found there was "just reason for delaying an appeal," noting that "[d]elaying an appeal an additional few months, at most, is not unduly burdensome to Boeing at this point in the litigation," and that "the interest in avoiding piecemeal appeals outweighs any interest [Boeing] may have in an immediate appeal." *Id*.

8. Here, Defendants claim prejudice because the SEBC allegedly "cannot exercise its statutory duty to select a healthcare plan it deems in the best interests of the State." Motion at 6. Preliminarily, this allegation ignores that the SEBC – having been led by the individual Administration defendants – is under a constraint precisely because it already failed to select a Medicare retiree healthcare plan in keeping with its statutory duty to follow open meeting and open government laws. *RiseDelaware Inc. v. DeMatteis*, 2022 WL 11121549, at *4 (Del. Super.).

9. Moreover, the delay here was of Defendants' own making due to their improvident attempt to appeal a patently non-final order of the Superior Court as if it were a final order. Defendants' Motion only compounds the delay by attempting

to proceed in a court plainly lacking jurisdiction rather than proceeding before the only court with jurisdiction – the Court of Chancery – where the Defendants are already engaged and have filed a motion to dismiss. The delays that Defendants elected to create should not be permitted to vexatiously compound the proceedings for the Supreme Court and Plaintiffs. The "overriding concern [of Rule 54(b)] is that of judicial, and more specifically, appellate economy." *See Boeing*, WL 3233068, at *1, n.4 (citation omitted). Trial courts should "refrain from 'issuing final judgments on less than all issues if it creates the possibility of making an appellate Court review the facts and issues of a case more than once.'" *Id.* Entry of partial judgment here would certainly burden the Supreme Court with review of the facts and issues twice.

10. Finally, as in *Boeing*, there can be *no*, let alone *severe*, prejudice to Defendants. The SEBC on April 24, 2023 voted to extend the current Medicare Supplement Plan (Medicfill) through June 30, 2024 under 29 *Del.C.* §6907 (allowing bypass of statutory contract requirements for unforeseen critical needs). Secretary DeMatteis has said Medicfill could be further extended in another six months to the end of 2024 if there is still a critical need. *See* Decl. (2d) of LePage, ¶3. Moreover, the subcommittee of the SEBC created legislatively (the RHBAS) is considering options for retiree healthcare, with its work not expected to be completed for months. It can hardly be supposed the SEBC would proceed before its own subcommittee completed its work. *See Id.*

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