

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PLAYTEX PRODUCTS, INC.,	§
	§
Employer Below-	§ Nos. 475/476, 2003
Appellant,	§ (CONSOLIDATED)
	§
v.	§ Court BelowCSuperior Court
	§ of the State of Delaware,
SYLVIA I. ROLAND and GLORIA F.	§ in and for Kent County
WOODALL,	§ C.A. Nos. 01A-07-002 and
	§ 02A-02-004
Claimants Below-	§
Appellees.	§

Submitted: January 12, 2004

Decided: February 2, 2004

Before **HOLLAND**, **BERGER**, and **STEELE**, Justices.

**ORDER**

This 2<sup>nd</sup> day of February, 2004, upon consideration of the appellees' motions to dismiss and the response and reply thereto, it appears to the Court that:

(1) The employer-appellant, Playtex Products, Inc., filed these respective appeals<sup>1</sup> from separate orders of the Superior Court awarding attorneys' fees to the claimants-appellees pursuant to 19 Del. C. § 2350(f).<sup>2</sup> The appellees have moved to dismiss the appeals on the ground that the orders appealed from are

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<sup>1</sup> By order dated January 5, 2004, after the appellees had filed their motions to dismiss, this Court granted Playtex's motion to consolidate these appeals.

<sup>2</sup> Section 2350(f) provides, in part, that the Superior Court may allow a reasonable fee to claimant's attorney for services on appeal from an Industrial Accident Board decision. The fee is to be taxed in the costs and become a part of the final judgment in the case.

interlocutory, and Playtex has not complied with the requirements of Supreme Court Rule 42 in seeking to take an interlocutory appeal. The appellees argue that the Superior Court's award of attorneys' fees is not final because proceedings are still pending before the Industrial Accident Board.

(2) The record reflects that the appellees had filed separate appeals to the Superior Court following respective judgments entered by the IAB. In Sylvia Roland's case, the IAB awarded her medical expenses and attorneys' fees. In Gloria Woodall's case, the IAB awarded disfigurement benefits and attorneys' fees. Both Roland and Woodall appealed the IAB's judgment with respect to attorneys' fees only. In each appeal, the Superior Court reversed the IAB's judgment as to attorneys' fees and remanded the matters, respectively, to the IAB for further proceedings. Neither case has proceeded to a further hearing before the IAB on the issue of attorneys' fees. Following the remand orders, the Superior Court in each case awarded reasonable attorneys' fees for each appellee's successful appeal. Playtex thereafter filed these appeals, which have been consolidated for decision before this Court.

(3) In response to the appellees' motions to dismiss, Playtex argues that the Superior Court's orders are not interlocutory in nature because the award of attorneys' fees is severable and can be enforced against it as a separate judgment

absent an appeal. We disagree. In *Pollard v. The Placers, Inc.*,<sup>3</sup> this Court held that, although an order awarding attorneys' fees on appeal from an IAB decision becomes a fixed entitlement as of the date of the order, the order itself is interlocutory and "must await resolution of the underlying 'cause' before it becomes part of a final judgment."<sup>4</sup> Because the underlying causes in these consolidated appeals are still pending before the IAB, the matters must be dismissed as interlocutory.

NOW, THEREFORE, IT IS ORDERED that the motions to dismiss are GRANTED. The within appeals hereby are DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>3</sup> 692 A.2d 879 (Del. 1997)

<sup>4</sup> *Id.* at 881.