

February 13, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 05-30459  
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CYNTHIA GIBSON

Plaintiff - Appellant

v.

CANAL INSURANCE COMPANY; ET AL

Defendants

CANAL INSURANCE COMPANY

Defendant - Appellee

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
No. 2:03-CV-3566  
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Before JONES, Chief Judge, KING and DENNIS, Circuit Judges.

PER CURIAM:\*

The subject of this appeal is denominated a Judgment. It begins by considering an order which denied motions for summary judgment filed by plaintiff and defendants and goes on to order that "coverage owed by defendant Canal Insurance is \$100,000 pursuant to Federal Rule of Civil Procedure 54(b)." Although the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

parties and the district court apparently considered this Judgment to be an appropriate Fed. R. Civ. P. 54(b) judgment, it is clearly not a final judgment as to defendant Canal Insurance Company since, as we were informed at oral argument, issues of liability and damages remain to be resolved. What the parties and the district court may have intended was to invoke 28 U.S.C. § 1292(b) and to ask the Court of Appeals to resolve a controlling question of law with respect to the reformation of an insurance policy issued by Canal Insurance Company. However, neither the plaintiff nor Canal applied to the Court of Appeals for permission to appeal the Judgment within ten days after the entry of the Judgment, as required by § 1292(b). Since neither the requirements of Fed. R. Civ. P. 54(b) nor those of § 1292(b) have been complied with, we have no jurisdiction. See Liberty Mutual Ins. Co. v. Wetzel, 424 U.S. 737 (1976).

This appeal is DISMISSED. Each party shall bear its own costs.