IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10413
Summary Calendar

NORTHBROOK PROPERTY & CASUALTY INSURANCE COMPANY,

Plaintiff-Third Party Defendant-Appellant-Cross Appellee,

versus

ACB SALES & SERVICE, INC., ETAL.,

Defendants,

ACB SALES & SERVICE INC.,

Defendant-Counter Plaintiff-Third Party Plaintiff-Appellee-Cross Appellee,

HOME INSURANCE COMPANY,

Defendant-Cross Defendant-Appellee-Cross Appellee,

AETNA CASUALTY & SURETY COMPANY,

Defendant-Cross Defendant-Appellee-Cross Appellee,

versus

WILLIS CORROON CORPORATION OF ARIZONA,

Defendant-Counter Defendant-Third Party Defendant-Cross Plaintiff-Appellee-Cross Appellant.

Appeals from the United States District Court
for the Northern District of Texas
(3:93-CV-674-R)

(December 1, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

As several of the parties have suggested in their appellate briefs, this court is without jurisdiction over this appeal, for the reason that no final, appealable order has been entered. All parties agree that the order entered on April 14, 1994, from which Northbrook Property & Casualty Insurance Company attempts to appeal, did not dispose of all claims and specifically did not dispose of Northbrook's claim against Willis Corroon.

Northbrook argues that the district court's order is final and appealable under FED. R. CIV. P. 54(b) because the order states, "This is a FINAL ORDER." Northbrook reasons that the district court implicitly meant to enter the order pursuant to rule 54(b), which allows, under certain circumstances, a district court to enter a final, appealable judgment as to fewer than all the issues and parties.

Northbrook's argument fails, however, because in the same

[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

order, the district court stated, "Plaintiff's Motion for Entry of Final Judgment under Fed. R. Civ. P. 54(b) is DENIED." Even under the somewhat relaxed standards of Kelly v. Lee's Old Fashioned Hamburgers, Inc., 908 F.2d 1218 (5th Cir. 1990) (per curiam) (en banc), the district court cannot be deemed to have intended what it specifically denied.

We are without jurisdiction. The appeal, accordingly, is DISMISSED.