

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30558

GRUPO NOVA SA, United States of
America for the use and benefit
of,

Plaintiff - Appellant-Cross-Appellee,

versus

CONTRATOS Y MANTENIMIENTOS, SA;
ASSA COMPANIA GENERAL DE SEGUROS,
SA,

Defendants - Appellees-Cross-Appellants.

Appeal from the United States District Court for the
Eastern District of Louisiana
(96-CV-1630)

February 11, 1998

Before GARWOOD, JOLLY, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

All parties to this action represented to the district court that it lacked subject matter jurisdiction over this matter and that the Eastern District of Louisiana was an improper venue in which to litigate the case; in short, the parties effectively represented to the court that there was no case or controversy

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

before it. Based on this representation, the district court dismissed the case for want of subject matter jurisdiction. On appeal, all parties now contend that the district court possessed subject matter jurisdiction and that the dismissal was improper. We refuse to allow the parties to assign error to the district court when that court entered the order of dismissal for lack of subject matter jurisdiction based on the parties' stated position. We note that a dismissal for lack of subject matter jurisdiction is without prejudice, allowing this action to be filed in a proper forum. For these reasons, the order of the district court dismissing this case is

A F F I R M E D.