## NOT RECOMMENDED FOR FULL-TEXT PUBLICATION File Name: 09a0112n.06 Filed: February 11, 2009

## No. 07-3525

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES,	)
	)
Plaintiff-Appellee,	)
	)
V.	) ON APPEAL FROM THE UNITED
	) STATES DISTRICT COURT FOR THE
TRI-STATE GROUP, INC., formerly	) NORTHERN DISTRICT OF OHIO
known as Tri-State Asphalt Corp.,	)
	)
Defendant-Appellant.	)
	)
	) )

## Before: COLE, GIBBONS, and ROGERS, Circuit Judges.

**PER CURIAM.** A review of the record indicates that on November 6, 2006, an opinion and order was entered denying defendant Tri-State Group, Inc.'s motion for summary judgment. On March 28, 2007, the district court filed a judgment entry in favor of plaintiff United States "[f]or the reasons set forth in the Memorandum Opinion filed on November 16,<sup>1</sup> 2006." The defendant filed a notice of appeal from the March 28, 2007 judgment entry.

No final judgment or appealable order has been entered by the district court. The November 6 opinion and order is not final and appealable because it did not end the litigation on the merits. *See Floyd v. City of Detroit*, 518 F.3d 398, 404 (6th Cir. 2008) (denial of a motion for summary

<sup>&</sup>lt;sup>1</sup>This appears to be a typographical error, as no docket entry appears on November 16. The date should read November 6.

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judgment not appealable except in circumstances not present here). The March 28 judgment entry purporting to render judgment for the plaintiff is inconsistent with the November 6 opinion and order, which did not resolve all claims between the parties. We therefore lack jurisdiction over this case. *See* 28 U.S.C. § 1291.

It is ORDERED that the appeal be and hereby is dismissed *sua sponte* without prejudice to perfect a timely appeal upon entry of a final judgment.