

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION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 16,¹ 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

¹This appears to be a typographical error, as no docket entry appears on November 16. The date should read November 6.

United States v. Tri-State Group, Inc.
No. 07-3525

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.