

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ST. PAUL MERCURY INSURANCE CO.,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. H-10-5146
	§	
LEWIS-QUINN CONSTRUCTION, <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER

On December 24, 2012, this court entered a final judgment for St. Paul Mercury Insurance Co. (“St. Paul”) under Rule 54(b) of the Federal Rules of Civil Procedure. (Docket Entry No. 116). On January 2, 2013, defendants Phoenix Rental Inc., Joseph V. Turner, and Peggy J. Turner (the “Turner Defendants”) filed a notice of appeal of the final judgment. (Docket Entry No. 119). On February 21, 2013, the parties filed an agreed motion to vacate the judgment under Rule 60(b). (Docket Entry No. 132). The parties have stated that the final judgment is “no longer necessary” in light of the settlement St. Paul and defendants Alliance Development, Inc., Galloway Trust Management, James E. Galloway, and Catherine B. Galloway (the “Galloway Defendants”) executed in October 2012. (*Id.*)

This court lacks jurisdiction to grant the Rule 60(b) motion due to the pending appeal. *See Shepherd v. Int’l Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004). The parties, however, ask this court to indicate whether there is a “substantial issue” as to whether the court will grant the motion, either in whole or in part, in light of the parties’ representations to this court. FED. R. CIV. P. 62.1. They

seek an indicative ruling so that the court of appeals may remand the case for further proceedings.
See id.

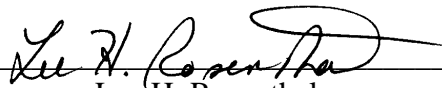
Based on the parties' agreement as to the reasons for the motion, and finding that there is a substantial issue as to whether this court will grant the Rule 60(b) motion, this court **GRANTS** the request for an indicative ruling, (Docket Entry No. 132). All parties must attend a hearing and status conference to discuss the implications of this indicative ruling, the merits of the Rule 60(b) motion, and the steps to be taken on remand. The parties must also be prepared to address the following issues:

- (1) the status of the pending request for attorneys' fees and supporting materials filed by St. Paul, (Docket Entries No. 121, 122, 123);
- (2) whether and to what extent the parties' agreed motion affects the Memorandum and Opinion granting summary judgment for St. Paul, (Docket Entry No. 96);
- (3) whether and to what extent the parties' agreed motion affects the cross- and counterclaims, (Docket Entries No. 109, 118); and
- (4) whether and to what extent the parties' agreed motion affects the motion to dismiss for lack of subject-matter jurisdiction, (Docket Entry No. 105).

The status conference is set for **April 1, 2013**, at 9:00 a.m. in Courtroom 11-B.

This is an indicative ruling.

SIGNED on March 27, 2013, at Houston, Texas.



Lee H. Rosenthal
United States District Judge