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## **Under-Utilized Procedural Tools: How to Make Use of Rule 54(b) Judgments**

**Anna K. MacFarlane**

Author Contact Information:  
Anna K. MacFarlane  
Pulman, Cappuccio & Pullen, LLP  
San Antonio, Texas

[amacfarlane@pulmanlaw.com](mailto:amacfarlane@pulmanlaw.com)

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By Anna K. MacFarlane  
Pulman, Cappuccio & Pullen, LLP**

## **I. Introduction**

You represent a plaintiff in a complex lawsuit against multiple defendants. Discovery has moved more quickly for one set of claims than another, and you decide to file a motion for partial summary judgment that would dispose of all of your claims against one of the defendants in the lawsuit. After extensive briefing and a lengthy hearing on the motion, the district court grants your partial motion for summary judgment and enters an order finding the defendant liable and awarding damages to your client, including the attorneys' fees accrued in association with the motion for partial summary judgment. While the court's order granting partial summary judgment disposes of all claims against one defendant, it does not resolve the remaining claims against the other defendant in the action. Your judgment is stuck waiting for the other claims to move slowly through discovery disputes. You would love to be able to proceed with efforts to collect the damages awarded in the summary judgment order without waiting for the other claims to come to conclusion. What can you do? Federal Rule of Civil Procedure 54(b) could help.

## **II. Finality Rule and Rule 54(b)**

Under 28 U.S.C. § 1291, appellate courts only have jurisdiction over a district court's final judgments. Relatedly, a successful litigant can only enforce and collect on a final judgment. "Generally speaking, a decision of the district court is 'final' if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"<sup>1</sup> Prior to the 1948 revisions to

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<sup>1</sup> *Shipes v. Trinity Indus., Inc.*, 883 F.2d 339, 341 (5<sup>th</sup> Cir. 1989) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

the Federal Rules of Civil Procedure, cases moved through the federal courts as one “judicial unit” and individual orders and partial judgments were not appealable until all claims were decided.<sup>2</sup>

As litigation became more complex, the Federal Rules of Civil Procedure were amended, and Rule 54(b) changed to permit a district court to certify an order as a final, appealable judgment.<sup>3</sup> Rule 54(b) provides:

**(b) Judgment on Multiple Claims or Involving Multiple Parties.** When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Rule 54(b), as amended in 1948, created a procedural tool that provides an exception to the finality requirement of appellate jurisdiction under 28 U.S.C. § 1291, wherein a party that obtained an order resolving a claim or claims against another party can appeal that partial judgment as a final, appealable (and enforceable) judgment under the right circumstances.<sup>4</sup> However, a partial judgment under Rule 54(b) is only appealable if it has been certified by the district court.<sup>5</sup>

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<sup>2</sup> See *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437-38 (1956) (discussing the impact of Rule 54(b) as amended).

<sup>3</sup> *Sears*, 351 U.S. at 432-33 (recognizing the need for greater flexibility in more complex litigation after the adoption of the Federal Rules of Civil Procedure).

<sup>4</sup> Fed. R. Civ. P. 54(b).

<sup>5</sup> *D & J Investments of Cenla, L.L.C. v. Baker Hughes a GE Company, L.L.C.*, 52 F.4th 187, 194-95 (5th Cir. 2022) (“Because Plaintiff’s action involves multiple parties, the order . . . was appealable only if it was certified under Rule 54(b).”). Failure to obtain Rule 54(b) certification prior to noticing an appeal of an order that otherwise qualifies for certification is not fatal in the Fifth Circuit, as will be discussed further below.

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