

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

In Re: FEMA TRAILER
FORMALDEHYDE PRODUCTS
LIABILITY LITIGATION

MDL NO. 07-1873

SECTION "N" (5)

THIS DOCUMENT RELATES TO
Member case No. 09-2977

ORDER AND REASONS

Before the Court is United States of America's Motion for Review of Taxation of Costs (Rec. Doc. 14319). This motion is opposed. (See Rec. Doc. 14438). After considering the memoranda of the parties and the applicable law,

IT IS ORDERED that, for substantially the same reasons stated by the United States in its Motion and Reply (See Rec. Docs. 14319 and 14568), the **United States of America's Motion for Review of Taxation of Costs (Rec. Doc. 14319)** is **GRANTED**. Thus, costs are awarded in favor of the United States in the amount of \$154,468.15, which includes \$130,072.95 in costs relating to Plaintiff's mold claim, and \$24,395.20 in costs previously awarded to the United States by the Clerk.¹

¹ The Court recognizes that this was a bellwether trial, which by definition is designed to be illustrative of similar claims asserted in the MDL. Given this, the Court encourages Plaintiff's counsel to devise and pursue any and all appropriate alternatives to spread these costs amongst more individuals than only Mr. Wright (i.e., amongst Plaintiff's counsel and/or other claimants). Indeed, Mr. Wright should not be solely financially responsible for bringing his lawsuit to trial, the result of which was meant to provide information to many other claimants who, as a result of this trial, may not be burdened with

Specifically, Plaintiff ultimately succeeded in adding his mold claim to the litigation, despite previous failed attempts to do so, based on his counsel's representation that he had a good faith basis to bring the claim, that the claim would relate to other cases in the MDL, and that he would promptly abandon the claim in the event he could not meet his burden of proof. (See Rec. Doc. 2625-1 at pp. 36, 48-49). After Plaintiff was granted leave to amend his Complaint to add the mold claim, the Government hired Dr. Bruce Kelman to investigate those claims and prepare a Rule 26 Expert Report. The costs of Dr. Kelman's investigation and report totaled \$130,072.95. (Rec. Doc. 11936-5). However, just eight days before the close of discovery, this Court dismissed Plaintiff's Federal Tort Claims Act ("FTCA") claims against the Government for lack of subject matter jurisdiction. (Rec. Doc. 10493). Thereafter, the private defendants filed a Motion for Summary Judgment seeking, inter alia, dismissal of Plaintiff's mold claim. (Rec. Doc. 10933). In Plaintiff's Opposition, he simply did not address/contest the dismissal of the mold claim. The undersigned stated as follows:

Further, based on Plaintiff's vigorous argument, which he ultimately won, to have mold exposure claims added to this bellwether trial and Defendants' adamant arguments to the contrary, including those relating to the increased cost of litigation expenses relating thereto, the Court finds it appropriate to award Defendants the cost of all expert fees related to mold testing and analysis, as well as the fees for the expert reports that were generated based on such testing and analysis.

(Rec. Doc. 12049). The Court finds that the Government should benefit from this as well, because it expended similar funds to defend against Plaintiff's mold claim, despite being dismissed a few

incurring such costs, for whatever reason. (Bellwether trials, by design, are meant to be instructive in so far as how/if future trials should be conducted. The benefits to other plaintiffs are many, including review of trial strategy, evaluation of witnesses for later use, jury selection and post-trial interviewing, settlement evaluation, and subsequent motion practice).

short weeks before this decision was rendered.

New Orleans, Louisiana, this 26th day of October, 2009.



KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE