

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. 07-9228

ORDER AND REASONS

Before the Court is Defendant Fleetwood Enterprises, Inc's Motion for Summary Judgment as to the Government Contractor Defense (Rec. Doc. 6626). In this motion, Fleetwood Enterprises, Inc. ("Fleetwood") asserts that it is entitled to state law tort immunity because of its status as a government contractor. After considering the memoranda of the parties and the applicable law, the Court concludes that there are genuine issues of material fact that exist relating to, *inter alia*, (1) whether Fleetwood can be considered to have contracted with FEMA when there is undisputably no contract between it and FEMA¹ and (2) whether the Government approved reasonably precise specifications as opposed to merely "rubber-stamping" them. The issue of whether the jury should even be charged with this defense on behalf of

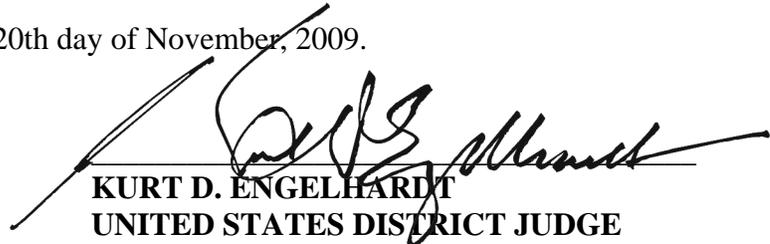
¹ Fleetwood cites *In re Air Disaster at Ramstein Air Base, Germany*, 81 F.3d 570 (5th Cir. 1996) for the proposition that no contract is necessary. However, this Court notes that that specific issue was not addressed by the Fifth Circuit. Also, in that case, the sub-contractor "worked closely together" with the Government on the development of the product at issue. That is dissimilar from the instant situation wherein Fleetwood was provided certain government specifications not from the Government directly but from another entity who directly received them from the government.

Fleetwood may be addressed out of the presence of the jury after the close of the evidence.

Accordingly,

IT IS ORDERED that the Defendant Fleetwood Enterprises, Inc's Motion for Summary Judgment as to the Government Contractor Defense (Rec. Doc. 6626) is **DENIED**.

New Orleans, Louisiana, this 20th day of November, 2009.



KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE