

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 Forest River, Inc's Motion for Summary Judgment as to the Government Contractor Defense (Rec. Doc. 10936). In this motion, Forest River, Inc. ("Forest River") asserts that it is entitled to 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 Forest River 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

¹ Forest River 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. As this Court previously noted in a ruling pertaining to the Fleetwood bellwether trial and as acknowledged by Forest River in this matter, the specific issue of whether a contract is necessary was not addressed by the Fifth Circuit. Further, in *In Re Air Disaster*, the sub-contractor "worked closely together" with the Government on the development of the product at issue. While the Court acknowledges that Forest River worked closer with the Government than the evidence indicated that Fleetwood had worked, the Court is not convinced, on the showing made, that the relationship between Forest River and the Government entitles it to government [sub]contractor status. Indeed, a representative of FEMA visited a Forest River facility on only one occasion and only for a few hours.

specifications (Exhibit C to Rec. Doc. 10936)². The issue of whether the jury should even be charged with this defense on behalf of Forest River may be addressed out of the presence of the jury after the close of the evidence. Accordingly,

IT IS ORDERED that the **Forest River, Inc's Motion for Summary Judgment as to the Government Contractor Defense (Rec. Doc. 10936)** is **DENIED**.

New Orleans, Louisiana, this 24th day of February, 2010.



KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE

² The FEMA specifications failed to address the actual engineering and underlying design, material, and construction choices involved in the assembly of an EHU. They specifically did not address the use of materials such as plywood, pressboard, and other products containing formaldehyde.