

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
all Louisiana plaintiffs

ORDER AND REASONS

Before the Court are the following two motions: (1) Plaintiffs' Motion for Entry of Judgment Under FRCP 54(b) (Rec. Doc. 14197); and (2) PSC's Motion to Certify for Interlocutory Review Pursuant to 28 U.S.C. § 1292(b) the Court's May 18, 2010 Order Dismissing FTCA Negligence Claims of all Louisiana Plaintiffs (Rec. Doc. 15976). Both motions are opposed. (See Rec. Docs. 14322 and 16077, respectively). After considering the memoranda of the parties and the applicable law,

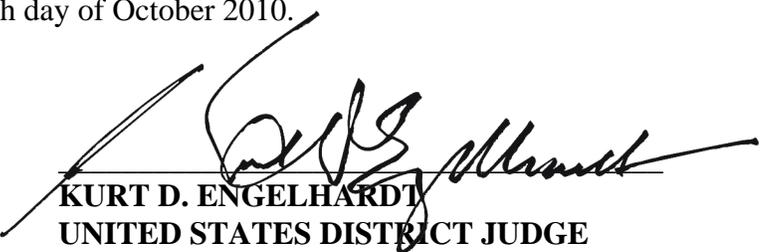
IT IS ORDERED that **Plaintiffs' Motion for Entry of Judgment Under FRCP 54(b) (Rec. Doc. 14197)** is **DENIED**. The Court concludes that its Order (Rec. Doc. 14124) is not an appealable judgment pursuant to Rule 54(b) because it adjudicated fewer than all the claims at issue in the applicable actions, and thus, is not an appealable judgment in its own right. However,

IT IS FURTHER ORDERED that **PSC's Motion to Certify for Interlocutory Review Pursuant to 28 U.S.C. § 1292(b) the Court's May 18, 2010 Order Dismissing FTCA Negligence**

Claims of all Louisiana Plaintiffs (Rec. Doc. 15976) is GRANTED. The Court concludes that the PSC has demonstrated that the matter involves (1) a controlling question of law, (2) as to which there potentially is substantial ground for difference of opinion, and (3) an immediate appeal from the order would materially advance the ultimate termination of the litigation. See 28 U.S.C. § 1292(b). See also *Complaint of L.L.P. & D. Marine, Inc.*, 1998 WL 66100, at *1 (E.D.La. Feb.13, 1998) (holding that the movant bears the burden of satisfying all of these criteria).

Specifically, the applicable legal standard of care (negligence versus gross negligence) governing FEMA's conduct in this litigation clearly is an issue common to all Louisiana plaintiff Federal Tort Claims Act ("FTCA") claims, and thus, is one that must be resolved with clarity and finality as this MDL proceeds. An immediate appeal of these questions will promote an accelerated and expedited resolution of this MDL, because it will inform the scope of discovery and proof required in thousands of consolidated FTCA cases awaiting trial herein. Further, similar appeals are pending relating to the FTCA claims of Alabama and Mississippi plaintiffs.

New Orleans, Louisiana, this 25th day of October 2010.


KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE